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⁽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.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2020/734

of 27 May 2020

approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications ('Rheinisches Apfelkraut' (PGI))

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined Germany's application for the approval of amendments to the specification for the protected geographical indication 'Rheinisches Apfelkraut', registered under Commission Implementing Regulation (EU) No 1378/2011 ⁽²⁾.
- (2) Since the amendments in question are not minor within the meaning of Article 53(2) of Regulation (EU) No 1151/2012, the Commission published the amendment application in the *Official Journal of the European Union* ⁽³⁾, as required by Article 50(2)(a) of that Regulation.
- (3) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the specification published in the *Official Journal of the European Union* regarding the name 'Rheinisches Apfelkraut' (PGI) are hereby approved.

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*.

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) No 1378/2011 of 20 December 2011 entering a name in the register of protected designations of origin and protected geographical indications (Rheinisches Apfelkraut (PGI)) (OJ L 343, 23.12.2011, p. 18).

⁽³⁾ OJ C 431, 23.12.2019, p. 13.

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

Done at Brussels, 27 May 2020.

*For the Commission,
On behalf of the President,
Janusz WOJCIECHOWSKI
Member of the Commission*

COMMISSION REGULATION (EU) 2020/735**of 2 June 2020****amending Regulation (EU) No 142/2011 as regards the use of meat-and-bone meal as a fuel in combustion plants****(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 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 ⁽¹⁾, and in particular Article 15(1)(e) and point (i) of the first subparagraph of Article 27 thereof,

Whereas:

- (1) Commission Regulation (EU) No 142/2011 ⁽²⁾ lays down implementing measures for the public and animal health rules of Regulation (EC) No 1069/2009, including requirements concerning the use of animal by-products and derived products as a fuel in combustion plants.
- (2) Meat-and-bone meal (MBM) is the animal protein derived from the processing of Category 1 or Category 2 materials. For the last decades, MBM has been disposed of as waste by incineration or co-incineration in accordance with Article 12(a) or (b) of Regulation (EC) No 1069/2009. For the sustainable use of energy sources, the industry developed a technology for the use of MBM as a fuel in combustion devices in accordance with Article 12(e) of that Regulation, in order to use the heat generated by that combustion.
- (3) Article 6 of Regulation (EU) No 142/2011 provides for the rules for approval of combustion plants using manure of farmed animals as a fuel for combustion. It is necessary to amend that Article in order to include rules concerning the use of MBM as a fuel for combustion.
- (4) Chapter V of Annex III to Regulation (EU) No 142/2011 sets out rules on the types of plants and fuels that may be used for combustion and specific requirements for particular types of plants. It is appropriate to provide for rules concerning combustion plants in which MBM is used as a fuel for combustion, including emission limits and monitoring requirements. The emissions limits and monitoring requirements applying to combustion plants using poultry manure as a fuel should also apply to combustion plants with a total rated thermal input not exceeding 50 MW using MBM as a fuel in order to meet the relevant environmental standards.
- (5) This Regulation should be without prejudice to the obligations of Directive 2010/75/EU of the European Parliament and of the Council ⁽³⁾ providing for a comprehensive set of rules on integrated prevention and control of pollution arising from industrial activities. This Directive also lays down rules designed to prevent or, where that is not practicable, to reduce emissions into air, water and land and to prevent the generation of waste, in order to achieve a high level of protection of the environment taken as a whole. Installations treating animal-by products fall under the scope of that Directive provided that their treatment capacity exceeds 10 tonnes per day. The Directive obliges all installations falling under its scope to hold a permit which shall be based on best available techniques (BAT). The BAT conclusions, which are a part of the BAT reference documents published by the European Commission, are the reference for setting permit condition ⁽⁴⁾.

⁽¹⁾ OJ L 300, 14.11.2009, p. 1.

⁽²⁾ Commission Regulation (EU) No 142/2011 of 25 February 2011 implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive (OJ L 54, 26.2.2011, p. 1).

⁽³⁾ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17)

⁽⁴⁾ The reference document on BAT in slaughterhouses and animal by-products industries was adopted by the European Commission on 15 April 2005. <https://eippcb.jrc.ec.europa.eu/reference/>
It contains provisions for the combustion of meat-and-bone meal.

- (6) Directive (EU) 2015/2193 of the European Parliament and of the Council ⁽⁵⁾ introduced emission limit values for certain pollutants into the air from medium combustion plants with a total rated thermal input not exceeding 50 MW, covering all types of solid fuels. In addition, Regulation (EU) No 142/2011 determines comprehensively measures and conditions for combustion of specific animal by-products in such plants. However, the measures and conditions for the use of animal by-products or derived products other than on-farm poultry manure as a fuel in combustion plants were not established at that time. Therefore, it is necessary to set out rules and requirements, including specific emission limits values, for the use of MBM as a fuel in combustion plants with a total rated thermal input not exceeding 50 MW within the framework of the legislation on animal by-products.
- (7) The requirements set out in Regulation (EU) No 142/2011 should be sufficiently stringent to comply with the emission limits for other solid fuels in Directive (EU) 2015/2193. This Regulation also ensures that the possible adverse environmental or human health impacts resulting from incineration of the MBM are not greater than those resulting from the combustion of waste.
- (8) Emission limits values for the use of different materials as a fuel in combustion plants with a total rated thermal input exceeding 50 MW are laid down in Directive 2010/75/EU, which applies in case of the use of animal by-products and derived products, including MBM, as a fuel in such combustion plants.
- (9) Therefore, Article 6 of Regulation (EU) No 142/2011 and Annex III thereto should be amended accordingly.
- (10) This Regulation should allow the competent authorities to grant existing combustion plants a transitional period to comply with the requirements on controlled temperature rising of the exhaust gas, provided that during this transitional period the emissions do not present risks to public and animal health or the environment. The animal by-products legislation does not prevent Member States from applying the relevant calculation rules for emission limit values, set out in Directive (EU) 2015/2193, when MBM is combusted together with other fuels or waste.
- (11) 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

In Article 6 of Regulation (EU) No 142/2011, paragraph 8 is replaced by the following:

‘8. For the use of manure of farmed animals or meat-and-bone meal as a fuel for combustion as set out in Chapter V of Annex III, the following rules shall apply in addition to those referred to in paragraph 7 of this Article:

- (a) the application for approval that is submitted by the operator to the competent authority in accordance with Article 24 (1)(d) of Regulation (EC) No 1069/2009 must contain evidence certified by the competent authority or by a professional organisation authorised by the competent authorities of the Member State, that the combustion plant in which the manure of farmed animals or meat-and-bone meal is used as a fuel meets the requirements laid down in points B(3) for manure, and (D) in case of meat-and-bone meal as well as the requirements set out for both fuels in points B(4) and B(5) of Chapter V of Annex III to this Regulation, without prejudice to the possibility for the competent authorities of the Member State to grant a derogation from compliance with certain provisions in accordance with point C(4) of Chapter V of Annex III;

⁽⁵⁾ Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants (OJ L 313, 28.11.2015, p. 1).

- (b) the procedure for approval provided for in Article 44 of Regulation (EC) No 1069/2009 shall not be completed until at least two consecutive checks, one of them unannounced, have been carried out by the competent authority or by a professional organisation authorised by that authority, during the first six months of the operating of the combustion plant, including the necessary temperature and emission measurements. After the results of those checks showed compliance with the requirements set out in points B(3), B(4) and B(5) for manure, and (D) for meat-and-bone meal and, where applicable, with point C(4) or point D(5) of Chapter V of Annex III to this Regulation, full approval can be granted.
- (c) the combustion of meat-and-bone meal in combustion plants referred to in points A, B and C of Chapter V of Annex III to this Regulation shall not be authorised.'

Article 2

Annex III to Regulation (EU) No 142/2011 is amended in accordance with the text set out in the Annex to this Regulation.

Article 3

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, 2 June 2020.

For the Commission

The President

Ursula VON DER LEYEN

ANNEX

In Chapter V of Annex III to Regulation (EU) No 142/2011, the following point D is added:

'D. Combustion plants in which meat-and-bone meal is used as a fuel for combustion

1. Type of plant:

Combustion plants with a total rated thermal input not exceeding 50 MW.

2. Starting material:

Meat-and-bone meal of Category 1 and Category 2 materials, to be used as a fuel for combustion in accordance with the requirements set out in point 3 alone or in a mixture of meat-and-bone meal, rendered fat and manure.

3. Specific requirements for meat-and-bone meal used as a fuel for combustion:

- (a) meat-and-bone meal shall be stored in the combustion plant securely in a closed storage protected from access of animals and shall not be sent to another destination unless authorised by the competent authority in case of break down or abnormal operating conditions;
- (b) the combustion plant must be equipped with:
 - (i) an automatic or continuous fuel management system to place the fuel directly in the combustion chamber without further handling;
 - (ii) an auxiliary burner which must be used during start-up and shut-down operations to ensure that the temperature requirements set out in Section 2(2) of Chapter IV are met at all times during those operations and as long as unburned material is in the combustion chamber.

4. Methodology:

Combustion plants in which meat-and-bone meal of Category 1 or Category 2 materials is used as a fuel shall comply with the general requirements set out in Chapter IV and the specific requirements set out in points B(4) and B(5) of this Chapter.

5. Derogation and transitional period:

The Member State competent authority responsible for environmental issues may by way of derogation from point 3(b)(ii), grant combustion plants operating on 3 June 2020 an additional time period of maximum 4 years to comply with the second subparagraph of point 2 of Section 2 of Chapter IV.'

COMMISSION IMPLEMENTING REGULATION (EU) 2020/736**of 2 June 2020****amending Regulation (EC) No 474/2006 as regards the list of air carriers banned from operating or subject to operational restrictions within the Union****(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 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating carrier, and repealing Article 9 of Directive 2004/36/EC ⁽¹⁾, and in particular Article 4(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 474/2006 ⁽²⁾ establishes the list of air carriers which are subject to an operating ban within the Union.
- (2) Certain Member States and the European Union Aviation Safety Agency ('the Agency') communicated to the Commission, pursuant to Article 4(3) of Regulation (EC) No 2111/2005, information that is relevant for updating that list. Third countries and international organisations also provided relevant information. On the grounds of the information provided, the list should be updated.
- (3) The Commission informed all air carriers concerned, either directly or through the authorities responsible for their regulatory oversight, about the essential facts and considerations which would form the basis of a decision to impose an operating ban on them within the Union or to modify the conditions of an operating ban imposed on an air carrier which is included in the list in Annex A or B to Regulation (EC) No 474/2006.
- (4) The Commission gave the air carriers concerned the opportunity to consult all relevant documentation, to submit written comments and to make an oral presentation to the Commission and to the Committee established by Regulation (EC) No 2111/2005 (the 'EU Air Safety Committee').
- (5) The Commission has informed the EU Air Safety Committee about the ongoing joint consultations, within the framework of Regulation (EC) No 2111/2005 and Commission Regulation (EC) No 473/2006 ⁽³⁾, with the competent authorities and air carriers of Armenia, Congo (Brazzaville), Democratic Republic of Congo, the Dominican Republic, Equatorial Guinea, Kazakhstan, Kyrgyzstan, Libya, Nepal and Sierra Leone. The Commission also informed the EU Air Safety Committee about the aviation safety situation in Angola, Belarus, Indonesia, Nigeria and Russia.
- (6) The Agency informed the Commission and the EU Air Safety Committee about the technical assessments conducted for the initial evaluation and the continuous monitoring of Third Country Operator ('TCO') authorisations, issued pursuant to Commission Regulation (EU) No 452/2014 ⁽⁴⁾.

⁽¹⁾ OJ L 344, 27.12.2005, p. 15.

⁽²⁾ Commission Regulation (EC) No 474/2006 of 22 March 2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council (OJ L 84, 23.3.2006, p. 14).

⁽³⁾ Commission Regulation (EC) No 473/2006 of 22 March 2006 laying down implementing rules for the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council (OJ L 84, 23.3.2006, p. 8).

⁽⁴⁾ Commission Regulation (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 133, 6.5.2014, p. 12).

- (7) The Agency also informed the Commission and the EU Air Safety Committee about the results of the analysis of ramp inspections carried out under the Safety Assessment of Foreign Aircraft programme ('SAFA'), in accordance with Commission Regulation (EU) No 965/2012 ⁽⁵⁾.
- (8) In addition, the Agency informed the Commission and the EU Air Safety Committee about the technical assistance projects carried out in third countries affected by an operating ban under Regulation (EC) No 474/2006. Furthermore, the Agency provided information on the plans and requests for further technical assistance and cooperation to improve the administrative and technical capability of civil aviation authorities in third countries with a view to helping them resolve non-compliance with applicable international civil aviation safety standards. Member States were invited to respond to such requests on a bilateral basis in coordination with the Commission and the Agency. In that regard, the Commission reiterated the usefulness of providing information to the international aviation community, particularly through the International Civil Aviation Organisation's ('ICAO') Aviation Safety Implementation Assistance Partnership tool, on technical assistance to third countries provided by the Union and Member States to improve aviation safety around the world.
- (9) Eurocontrol provided the Commission and the EU Air Safety Committee with an update on the alarming function status of the SAFA and TCO and with current statistics for alert messages for banned air carriers.

Union air carriers

- (10) Following the Agency's analysis of information resulting from ramp inspections carried out on the aircraft of Union air carriers and from standardisation inspections carried out by the Agency, as well as specific inspections and audits carried out by national aviation authorities, several Member States have taken certain enforcement measures and informed the Commission and the EU Air Safety Committee about those measures.
- (11) Member States reiterated their readiness to act as necessary in the event that the relevant safety information indicates imminent safety risks as a consequence of a lack of compliance by Union air carriers with the relevant safety standards. In this regard, Bulgaria informed the Commission and the EU Air Safety Committee about actions it had taken with regard to the air carriers certified in Bulgaria.

Air carriers from Armenia

- (12) Air carriers from Armenia have never been included in Annex A or B to Regulation (EC) No 474/2006.
- (13) In October 2019, the Commission informed the Civil Aviation Committee of Armenia ('CAC') about certain safety concerns related to the air carriers certified by the CAC.
- (14) Following the appearance of the CAC before the EU Air Safety Committee in November 2019, from 3 to 7 February 2020 experts from the Commission, the Agency and Member States (the 'assessment team') conducted a Union on-site assessment visit in Armenia at the offices of the CAC and at the offices of two air carriers certified in Armenia, namely *Aircompany Armenia* and *Armenia Airways*.
- (15) It is clear from the assessment visit report that the CAC has a systemic weakness in terms of personnel management, as evidenced by a lack of procedures to determine manpower requirements, a lack of procedures and methodology for determining staff training requirements, as well as their effective implementation, and a lack of documented job descriptions for several of the CAC occupied and outsourced functions.
- (16) With specific regard to staff training, the assessment visit report notes the seriousness of the identified deficiencies in terms of the CAC's effective capacity to properly conduct the certification process and oversight of the air carriers certified in Armenia.

⁽⁵⁾ Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1).

- (17) Furthermore, it is clear from the assessment visit report that the CAC lacks the quality management function needed to oversee the administration and transposition of legal, regulatory, and technical requirements into an effective organisational structure and business processes.
- (18) With specific regard to the CAC Flight Operations Department, the assessment visit report notes the lack of a structured document management system whereby certification traceability can be assured, and as a consequence CAC was unable to provide requested evidence of activities performed as part of the initial Air Operator Certificate ('AOC') certification for its certified air carriers.
- (19) With specific regard to the CAC Airworthiness Department, the assessment visit report notes the existence of an oversight plan to oversee the continuing airworthiness organisations of the air carriers and the approved maintenance organisations it certifies.
- (20) The assessment visit report also notes evidence of ineffective oversight as the visit to the air carriers revealed several issues in the undertakings, which should have been detected by the CAC as part of its oversight obligations.
- (21) On the basis of the outcome of the Union on-site assessment visit, the Commission invited CAC to a hearing before the EU Air Safety Committee on 12 May 2020. The air carriers *Aircompany Armenia*, *Atlantis Armenian Airlines*, *Atlantis European Airways*, *Armenia Airways*, *Armenian Helicopters*, and *Skyball* were also heard by the EU Air Safety Committee on that occasion.
- (22) At the hearing, CAC informed the EU Air Safety Committee about the safety improvement measures enacted since appearing before the EU Air Safety Committee in November 2019, and emphasised its commitment to pursue these and additional efforts to further improve safety oversight in Armenia. Specific note was made of the support given by the Armenian Government to CAC in this regard. Furthermore, the extensive efforts made to enable technical assistance and cooperation with other States and international organisations were highlighted during the hearing.
- (23) In relation to the assessment visit report observations, CAC provided details with respect to the measures taken following the Union on-site assessment visit regarding the CAC organisational structure. Specific mention was made to measures related to the improvement of the personnel management, improvements as regards the CAC Flight Operations Department and of its AOC certification process, as well as the training of the CAC inspectors. Furthermore, CAC provided details with respect to efforts being undertaken for the development of an Integrated Management Manual and an internal Electronic Document Management System.
- (24) The EU Air Safety Committee's attention was specifically drawn to the efforts being undertaken to initiate, in cooperation with the Commission and EU Member States, a recertification of all the air carriers certified in Armenia, in combination with relevant on-the-job training support for its staff.
- (25) In addition, CAC underlined the results of the efforts made to revoke AOCs from Armenian certified air carriers no longer deemed to be compliant with international aviation safety standards.
- (26) The Commission and the EU Air Safety Committee acknowledge that the current situation is the result of a long period of inefficiency and neglect. Also, the Commission and the EU Air Safety Committee acknowledge the efforts made, and encourage CAC to pursue those efforts. They note the importance of the Armenian government's commitment in this regard, and equally conveyed commitment to support and cooperate with CAC with its efforts. The Commission and the EU Air Safety Committee positively note the personal capability and commitment of the Chair of CAC in pursuing these efforts.
- (27) Nonetheless, on the basis of all available evidence, including notably from the Union on-site assessment visit, it has to be concluded that the CAC capabilities to oversee the aviation activities in Armenia are insufficient and not complying with the applicable minimum international safety standards. Significant further improvement of CAC capabilities will be necessary in order to address the current safety deficiencies. Currently, due to the significant deficiencies identified at the level of the personnel management, staff training, quality management function, combined with the inadequate certification activities and the ineffective oversight of air carriers, it is demonstrated that CAC does not have a sufficient ability to implement the relevant international safety standards, and its oversight capability cannot ensure that the operations of the air carriers that it has certified are continuously conducted in compliance with the relevant international safety standards.

- (28) *Aircompany Armenia*, operates a fleet of two Boeing B737 aircraft. According to the company's statement, it is closely linked to *Georgian Airways*, an air carrier certified in Georgia with which *Aircompany Armenia* has established strong administrative and operational arrangements. In this respect, the Union on-site assessment visit found that *Aircompany Armenia* pilot training has been conducted in accordance with *Georgian Airways* procedures instead of its own procedures.
- (29) The Union on-site assessment visit found that *Aircompany Armenia* has staff knowledgeable with systems and manuals in place to manage the various operations. Most of the issues or shortcomings identified during the visit are related to the clarity of procedures and control over the sub-contracted activities, which are mostly conducted by *Georgian Airways*.
- (30) However, it is clear that *Aircompany Armenia's* compliance monitoring system needs to be further developed, in order to ensure identification of non-compliance with national regulations and with the provisions of the approved operations manual, including in relation with the record keeping system.
- (31) During the hearing before the EU Air Safety Committee, *Aircompany Armenia* provided details with respect to the measures taken to address the observations and recommendations of the Union on-site assessment visit, stating that six out of seven observations have been addressed. However, no evidence was provided to this effect.
- (32) *Atlantis Armenian Airlines*, is an Armenian air carrier which operates one Let L-410 aircraft. During the hearing, the air carrier gave an overview of the company, including the available resources, the development plan of its fleet, its Safety Management System ('SMS'), and its Flight Data Monitoring Program.
- (33) *Atlantis European Airways* operates a fleet of three Airbus A320 aircraft. During the hearing, the air carrier presented the company mission, the organisational structure, the training plan for its personnel and the SAFA results of the last year. In addition, information was provided about the air carrier's EASA TCO audit results.
- (34) *Armenia Airways* is an Armenian certified air carrier with a fleet of one British Aerospace Bae-146-300 aircraft.
- (35) During the Union on-site assessment visit, the assessment team identified several deficiencies that require immediate attention, namely as regards recording and tracking of audits and audit findings. The assessment team also found evidence of the Quality Management System's ineffectiveness, and considering the development plans of *Armenia Airways*, efforts should be made to establish a fully functional compliance monitoring system to identify any shortcomings which may affect the operations, and to ensure compliance with the approved operations manual. Special attention should be given to the training of pilots, to ensure competency of its crews.
- (36) During the hearing, *Armenia Airways* gave an overview of the air carrier and presented the measures taken following the Union on-site assessment visit. According to the information delivered during the hearing, all the observations raised by the assessment team have been addressed, except two, with which the air carrier did not agree. However, no evidence was provided to this effect.
- (37) *Armenian Helicopters* is an Armenian private helicopter air carrier, which operates domestic and international charter flights, as well as medical emergency transportation. During the hearing, the air carrier presented the structure and functioning of its SMS.
- (38) *Skyball* is an Armenian air carrier operating one hot air balloon. During the hearing the air carrier gave an overview of its organisation and activities, including information related to its SMS.
- (39) None of the information or evidence provided by any of the air carriers before or during the hearing provided the Commission and the EU Air Safety Committee with the assurance that the lack of safety oversight by CAC could be mitigated through the air carriers' own compliance and safety systems.

- (40) In accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005, the Commission therefore considers that at this stage with respect to air carriers from Armenia there are grounds for amending the list of air carriers which are subject to an operating ban within the Union, and to include all air carriers certified in Armenia in Annex A to Regulation (EC) No 474/2006.
- (41) Through prioritisation of ramp inspections of all air carriers certified in Armenia, pursuant to Regulation (EU) No 965/2012, Member States should continue verifying the effective compliance of air carriers certified in Armenia with the relevant international safety standards.

Air carriers from Congo (Brazzaville)

- (42) Air carriers from Congo (Brazzaville) were included in Annex A to Regulation (EC) No 474/2006 in 2009 ⁽⁶⁾.
- (43) By letter of 19 December 2019, the Commission requested from the *Agence Nationale de l'Aviation Civile du Congo (Brazzaville)* ('ANAC Congo') a list of documents concerning its structure, oversight system and activities, including enforcement measures taken since 2017, as well as the current list of AOC holders and registered aircraft.
- (44) On 5 February 2020, ANAC Congo provided the requested information. ANAC Congo also informed the Commission that, since the last update it provided to the Commission, the AOCs of the air carriers *Aero Service*, *Emeraude*, *Equatorial Congo Airlines S.A.* and *Mistral Aviation* had been revoked, and that the new air carrier *Société Nouvelle Air Congo* (AOC No. CG-CTA 004) had been certified. ANAC Congo did not provide evidence that the safety oversight of this air carrier is ensured in compliance with international safety standards. Since ANAC Congo has not demonstrated that it has a sufficient ability to implement and enforce the relevant safety standards, the issuance of AOC to this new air carrier does not guarantee sufficient compliance with international safety standards.
- (45) The Commission notes that the ICAO Coordinated Validation Mission that took place in June 2019 reported that the effective implementation of international safety standards in Congo (Brazzaville) has increased to 66,99 %. Although ANAC Congo has made clear progress in its safety oversight capabilities, that progress should be verified during a Union on-site assessment visit to ANAC Congo and to selected air carriers certified in Congo (Brazzaville), before any decision with respect to removing an operating ban within the Union is considered.
- (46) In accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005, the Commission therefore considers that the list of air carriers from Congo (Brazzaville), which are subject to an operating ban within the Union, should be amended to include *Société Nouvelle Air Congo* in Annex A to Regulation (EC) No 474/2006 and to remove *Aero Service*, *Emeraude*, *Equatorial Congo Airlines S.A.* and *Mistral Aviation* from that Annex.
- (47) Through prioritisation of ramp inspections of all air carriers certified in Congo (Brazzaville), pursuant to Regulation (EU) No 965/2012, Member States should continue verifying the effective compliance of air carriers certified in Congo Brazzaville with the relevant international safety standards.

Air carriers from the Democratic Republic of Congo

- (48) Air carriers from the Democratic Republic of Congo were included in Annex A to Regulation (EC) No 474/2006 in 2006 ⁽⁷⁾.
- (49) As part of its continuous monitoring activities, on 22 April 2020 the Commission requested the *Autorité de l'Aviation Civile* of the Democratic Republic of Congo ('AAC/RDC') to provide a list of all AOC holders certified in the Democratic Republic of Congo.

⁽⁶⁾ Commission Regulation (EC) No 1144/2009 of 26 November 2009 amending Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community (OJ L 312, 27.11.2009, p. 16).

⁽⁷⁾ Commission Regulation (EC) No 910/2006 of 20 June 2006 amending Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council (OJ L 168, 21.6.2006, p. 16).

- (50) On 6 May 2020, AAC/RDC informed the Commission that the new air carrier *Mwant Jet* (AOC No. AAC/DG/OPS-09/09) had been certified since the last update it provided to the Commission. On 13 May 2020, it also informed that the air carriers *Air Tropiques*, *Blue Airlines*, *Blue Sky*, *Dakota*, *Korongo Airlines*, *Mango Airlines*, *Serve Air*, and *Will Airlift* had ceased their flight operations, without having ever held an AOC. It also informed the Commission that the air carriers *Air Kasai*, *Doren Air Congo*, *Gomair*, *Transair Cargo Services* do not hold an AOC and that they are now engaged in the process of certification. Finally, it has informed the Commission that the name of the air carrier *Services Air* had changed and that the air carrier holds now an AOC under the name *Serve Air Cargo*. Since AAC/RDC has not demonstrated that it has a sufficient ability to implement and enforce the relevant safety standards, the issuance of an AOC to this new air carrier does not guarantee sufficient compliance with international safety standards.
- (51) In accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005, the Commission therefore considers that the list of air carriers from the Democratic Republic of Congo, which are subject to an operating ban within the Union, should be amended to include *Mwant Jet* and *Serve Air Cargo* in Annex A to Regulation (EC) No 474/2006, and to remove *Air Tropiques*, *Blue Airlines*, *Blue Sky*, *Dakota*, *Korongo airlines*, *Mango Airlines*, *Will Airlift*, *Air Kasai*, *Doren Air Congo*, *Gomair*, *Transair Cargo Services*, *Serve Air* and *Services Air* from that Annex.
- (52) Through prioritisation of ramp inspections of all air carriers certified in the Democratic Republic of Congo, pursuant to Regulation (EU) No 965/2012, Member States should continue verifying the effective compliance of air carriers certified in the Democratic Republic of Congo with the relevant international safety standards.

Air carriers from the Dominican Republic

- (53) Air carriers from the Dominican Republic have never been included in Annex A or B to Regulation (EC) No 474/2006.
- (54) On 15 April 2019, further to safety deficiencies identified by the Agency in the framework of the TCO authorisation process and based on the analysis of ramp inspections carried out under the SAFA programme, pursuant to Article 3(2) of Regulation (EC) No 473/2006 the Commission opened consultations with the Instituto Dominicano de Aviación Civil (IDAC).
- (55) From 27 to 31 January 2020 experts from the Commission, the Agency and Member States (the 'assessment team') conducted a Union on-site assessment visit in the Dominican Republic at the offices of IDAC.
- (56) IDAC appears as a well organised, satisfactorily staffed and adequately funded organisation, which since 2018 has started implementing modern aviation safety management techniques, with a safety management or performance-based approach, to complement the more traditional regulatory compliance-based oversight activities. The legislative framework (Aviation Law and technical regulations – RAD) appears to duly integrate all areas covered by the Annexes to the Convention on International Civil Aviation, signed in Chicago on 7 December 1944, and are regularly amended.
- (57) The assessment team concluded that IDAC has the capabilities to oversee the aviation activities in the Dominican Republic. Although a number of improvements in IDAC are necessary as far as the effectiveness of enforcement is concerned, the assessment team did not identify any immediate safety concern at the moment of the visit, neither from what it reviewed in the IDAC offices nor from what it observed during visits to a number of air carriers. However, the assessment team found that currently IDAC does not classify the findings with regard to criticality for aviation safety, and thus findings (with any level of impact on safety), as well as mere remarks, are managed in the same way during the follow-up process. Therefore, it could not be demonstrated that IDAC or the affected air carriers ensure an adequate prioritisation of safety-critical findings.
- (58) Whereas that situation has a potentially detrimental effect on enforcement, the strong points of the system, in terms of resources and regulations, indicate that the conditions for future improvement are present, whilst the weaknesses identified do not show any critical feature that can block such improvement.

- (59) On 15 April 2020, IDAC sent to the Commission an action plan to address the shortcomings observed and reported by the assessment team. The Commission considers that the planned actions, if duly implemented within the proposed timeframe, should solve the issues identified. IDAC should provide regular updates to the Commission on the progress of implementation of those planned actions.
- (60) In accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005, the Commission therefore considers that at this stage with respect to air carriers from the Dominican Republic there are no grounds for amending the list of air carriers, which are subject to an operating ban within the Union.
- (61) Through prioritisation of ramp inspections of all air carriers certified in the Dominican Republic, pursuant to Regulation (EU) No 965/2012, Member States should continue verifying the effective compliance of air carriers certified in the Dominican Republic with the relevant international safety standards.
- (62) If any relevant safety information indicates that there are imminent safety risks as a consequence of a lack of compliance with international safety standards, the Commission might be obliged to take further action in accordance with Regulation (EC) No 2111/2005.

Air carriers from Equatorial Guinea

- (63) Air carriers from Equatorial Guinea were included in Annex A to Regulation (EC) No 474/2006 in 2006 ⁽⁸⁾.
- (64) Following the Union on-site assessment visit that took place in October 2017, and the hearing at the EU Air Safety Committee of November 2017, in December 2018 Autoridad Aeronáutica de Guinea Ecuatorial ('AAGE') expressed to the Commission its interest in re-opening a dialogue on amending Annex A to Regulation (EC) No 474/2006 with respect to all air carriers certified in Equatorial Guinea.
- (65) Upon request, AAGE submitted to the Commission information on the improvements undertaken to its safety oversight system. Based on information received, the Commission notes the progress made, however certain deficiencies on fundamental issues, such as root cause analysis, a key component to prevent the re-appearance of non-conformities, are still present.
- (66) On 10 March 2020, the Commission, the Agency, Member States and representatives of AAGE held a technical meeting, during which AAGE provided information on its oversight activities and on the progress of the corrective action plan elaborated in 2017. In addition, AAGE informed the Commission that the operational fleets of respectively *Ceiba Intercontinental* and *Cronos Airlines* have been reduced to one mid-sized aircraft each.
- (67) As the currently available information is insufficient to remove doubts about existing deficiencies, a new Union on-site assessment visit to further verify the capacity of Equatorial Guinea to ensure effective safety oversight should be organised.
- (68) Based on information currently available, in accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005, the Commission therefore considers that at this stage with respect to air carriers from Equatorial Guinea there are no grounds for amending the list of air carriers, which are subject to an operating ban within the Union.
- (69) Through prioritisation of ramp inspections of all air carriers certified in Equatorial Guinea, pursuant to Regulation (EU) No 965/2012, Member States should continue verifying the effective compliance of air carriers certified in Equatorial Guinea with the relevant international safety standards.

Air carriers from Kazakhstan

- (70) Air carriers from Kazakhstan were removed from Annex A to Regulation (EC) No 474/2006 in 2016 ⁽⁹⁾.

⁽⁸⁾ Commission Regulation (EC) No 474/2006 of 22 March 2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council (OJ L 84, 23.3.2006, p. 14).

⁽⁹⁾ Commission Implementing Regulation (EU) No 2016/2214 of 8 December 2016 amending Regulation (EC) No 474/2006 as regards the list of air carriers which are subject to an operating ban within the Union (OJ L 334, 9.12.2016, p. 6).

- (71) As part of the continuous monitoring activities following Kazakhstan's removal from the Air Safety list, the Commission, by letter of 10 February 2020, informed the Civil Aviation Committee of Kazakhstan ('CAC KZ') about certain safety concerns related to the air carriers certified by CAC KZ, in particular regarding to BEK Air.
- (72) On 28 February 2020, CAC KZ and the Aviation Administration of Kazakhstan Joint Stock Company ('AAK') informed the Commission about the oversight activities performed in respect of the air carriers certified in Kazakhstan during the past three years, as well as about the oversight conducted in respect of the air carrier BEK Air. In this context, the Commission requested the evidence of Kazakhstan's continued capacity to ensure effective safety oversight.
- (73) With specific regard to the air carrier BEK Air, on 21 April 2020, the AOC of this air carrier has been revoked. The AOC of another air carrier, Azee Air, has been suspended pending further oversight activities.
- (74) Whilst acknowledging the recent steps taken by AAK to enhance its safety oversight capacity, the Commission has, on the basis of the analysis of the documentation and information provided, decided to open consultations with CAC KZ and AAK in accordance with Article 3(2) of Regulation (EC) No 473/2006.
- (75) In accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005, the Commission therefore considers that at this stage with respect to air carriers from Kazakhstan there are no grounds for amending the list of air carriers, which are subject to an operating ban within the Union.
- (76) Through prioritisation of ramp inspections of all air carriers certified in Kazakhstan, pursuant to Regulation (EU) No 965/2012, Member States should continue verifying the effective compliance of air carriers certified in Kazakhstan with the relevant international safety standards.
- (77) If any relevant safety information indicates that there are imminent safety risks as a consequence of a lack of compliance with international safety standards, the Commission might be obliged to take further action, in accordance with Regulation (EC) No 2111/2005.

Air carriers from Kyrgyzstan

- (78) Air carriers from Kyrgyzstan were included in Annex A to Regulation (EC) No 474/2006 in 2006 ⁽¹⁰⁾.
- (79) On 2 August 2019, the Commission requested from the Civil Aviation Agency of the Kyrgyz Republic ('CAA KG') a list of documents concerning its structure, oversight system and activities, including enforcement measures taken since 2017, as well as the current list of AOC holders and registered aircraft.
- (80) On 10 September 2019, CAA KG provided the requested information. CAA KG also informed the Commission that, since the last update provided to the Commission, the AOCs of the air carriers *Air Bishkek*, *Central Asian Aviation Services (Caas)*, *Heli Sky*, *Air Kyrgyzstan*, *Manas Airways*, *S Group International*, *Sky Bishkek*, *Sky Way Air*, and *Valor Air* have been revoked, and that the new air carrier *Air Company Air KG* (AOC No. 50) has been certified. Since CAA KG has not demonstrated that it has a sufficient ability to implement and enforce the relevant safety standards, the issuance of an AOC to this new air carrier does not guarantee sufficient compliance with international safety standards.
- (81) In accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005, the Commission therefore considers that the list of air carriers from Kyrgyzstan, which are subject to an operating ban within the Union, should be amended to include *Air Company Air KG* in Annex A to Regulation (EC) No 474/2006, and to remove *Air Bishkek*, *Central Asian Aviation Services (Caas)*, *Heli Sky*, *Air Kyrgyzstan*, *Manas Airways*, *S Group International*, *Sky Bishkek*, *Sky Way Air*, and *Valor Air* from that Annex.
- (82) Through prioritisation of ramp inspections of all air carriers certified in Kyrgyzstan, pursuant to Regulation (EU) No 965/2012, Member States should continue verifying the effective compliance of air carriers certified in Kyrgyzstan with the relevant international safety standards.

⁽¹⁰⁾ Commission Regulation (EC) No 1543/2006 of 12 October 2006 amending Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council and as amended by Regulation (EC) No 910/2006 (OJ L 283 14.10.2006, p. 27).

Air carriers from Libya

- (83) Air carriers from Libya were included in Annex A to Regulation (EC) No 474/2006 in 2014 ⁽¹¹⁾.
- (84) As part of its continuous monitoring activities, on 22 April 2020 the Commission requested the Libyan Civil Aviation Authority ('LCAA') to provide a list of all AOC holders certified in Libya.
- (85) On 4 May 2020, LCAA informed the Commission that the AOC of the air carrier *Ghadames Air Transport* has been revoked, and that the new air carriers *Al Maha Aviation* (AOC No. 030/18) and *Libyan Wings Airlines JSC* (AOC No. 029/15) have been certified. Since LCAA has not demonstrated a sufficient ability to implement and enforce the relevant safety standards, the issuance AOCs to those new air carriers does not guarantee sufficient compliance with international safety standards.
- (86) In accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005, the Commission therefore considers that with respect to air carriers from Libya the list of air carriers which are subject to an operating ban within the Union, should be amended to include *Al Maha Aviation* and *Libyan Wings Airlines JSC* in Annex A to Regulation (EC) No 474/2006, and to remove *Ghadames Air Transport* from that Annex.
- (87) Through prioritisation of ramp inspections of all air carriers certified in Libya, pursuant to Regulation (EU) No 965/2012, Member States should continue verifying the effective compliance of air carriers certified in Libya with the relevant international safety standards.

Air carriers from Nepal

- (88) Air carriers from Nepal were included in Annex A to Regulation (EC) No 474/2006 in 2013 ⁽¹²⁾.
- (89) As part of its continuous monitoring activities, on 22 April 2020 the Commission requested the Civil Aviation Authority of Nepal ('CAAN') to provide a list of all AOC holders certified in Nepal.
- (90) On 3 May 2020, CAAN informed the Commission that the AOC of the air carrier *Air Kasthamandap* has been revoked, and that the new air carriers *Heli Everest* (AOC No. 086/2016) and *Kailash Helicopter Services* (AOC No. 087/2018) have been certified. They also informed that *Muktinath Airlines* has changed its name into *Prabhu Helicopters*. Since CAAN has not demonstrated a sufficient ability to implement and enforce the relevant safety standards, the issuance of AOCs to those new air carriers does not guarantee sufficient compliance with international safety standards.
- (91) In accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005, the Commission therefore considers that with respect to air carriers from Nepal the list of air carriers which are subject to an operating ban within the Union, should be amended to include *Heli Everest* and *Kailash Helicopter Services* in Annex A to Regulation (EC) No 474/2006, and to remove *Air Kasthamandap* from that Annex.
- (92) Through prioritisation of ramp inspections of all air carriers certified in Nepal, pursuant to Regulation (EU) No 965/2012, Member States should continue verifying the effective compliance of air carriers certified in Nepal with the relevant international safety standards.

Air carriers from Sierra Leone

- (93) Air carriers from Sierra Leone were included in Annex A to Regulation (EC) No 474/2006 in 2006 ⁽¹³⁾.

⁽¹¹⁾ Commission Implementing Regulation (EU) No 1318/2014 of 11 December 2014 amending Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community (OJ L 355, 12.12.2014, p. 8).

⁽¹²⁾ Commission Implementing Regulation (EU) No 1264/2013 of 3 December 2013 amending Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community (OJ L 326, 6.12.2013, p. 7).

⁽¹³⁾ Commission Regulation (EC) No 910/2006 of 20 June 2006 amending Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council (OJ L 168, 21.6.2006, p. 16).

- (94) As part of its continuous monitoring activities, on 22 April 2020 the Commission requested the Sierra Leone Civil Aviation Authority ('SLCAA') to provide a list of all AOC holders certified in Sierra Leone.
- (95) On 2 May 2020, SLCAA informed the Commission that the AOCs of the air carriers *Air Rum*, *Destiny air Services*, *Heavylift Cargo*, *Orange Air Sierra Leone*, *Paramount Airlines*, *Seven Four Eight Air Services* and *Teebah Airways* have been revoked, and that currently there are no AOC holders in Sierra Leone.
- (96) Since SLCAA has not demonstrated that it has a sufficient ability to implement and enforce the relevant safety standards, the issuance of AOCs to any new air carriers does not guarantee sufficient compliance with international safety standards.
- (97) In accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005, the Commission therefore considers that the list of air carriers from Sierra Leone, which are subject to an operating ban within the Union, should be amended to remove the air carriers *Air Rum*, *Destiny Air Services*, *Heavylift Cargo*, *Orange Air Sierra Leone*, *Paramount Airlines*, *Seven Four Eight Air Services*, and *Teebah Airways* from Annex A to Regulation (EC) No 474/2006.
- (98) Regulation (EC) No 474/2006 should therefore be amended accordingly.
- (99) Articles 5 and 6 of Regulation (EC) No 2111/2005 recognise the need for decisions to be taken swiftly and, where appropriate, urgently, given the safety implications. It is therefore essential, for the protection of sensitive information and the traveling public, that the decisions in the context of updating the list of air carriers, which are subject to an operating ban or restriction within the Union, are published and enter into force immediately after their adoption.
- (100) The measures provided for in this Regulation are in accordance with the opinion of the EU Air Safety Committee established by Regulation (EC) No 2111/2005,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 474/2006 is amended as follows:

- (1) Annex A is replaced by the text in Annex I to this Regulation;
- (2) Annex B is replaced by the text in Annex II to this Regulation.

Article 2

This Regulation shall enter into force on the 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, 2 June 2020.

*For the Commission,
On behalf of the President,
Adina VĂLEAN
Member of the Commission*

ANNEX I

ANNEX A

LIST OF AIR CARRIERS WHICH ARE BANNED FROM OPERATING WITHIN THE UNION, WITH EXCEPTIONS ⁽¹⁾

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate ('AOC') Number or Operating Licence Number	ICAO three letter designator	State of the Operator
AVIOR AIRLINES	ROI-RNR-011	ROI	Venezuela
BLUE WING AIRLINES	SRBWA-01/2002	BWI	Suriname
IRAN ASEMAN AIRLINES	FS-102	IRC	Iran
IRAQI AIRWAYS	001	IAW	Iraq
MED-VIEW AIRLINE	MVA/AOC/10-12/05	MEV	Nigeria
AIR ZIMBABWE (PVT)	177/04	AZW	Zimbabwe
All air carriers certified by the authorities with responsibility for regulatory oversight of Afghanistan, including			Afghanistan
ARIANA AFGHAN AIRLINES	AOC 009	AFG	Afghanistan
KAM AIR	AOC 001	KMF	Afghanistan
All air carriers certified by the authorities with responsibility for regulatory oversight of Angola, with the exception of TAAG Angola Airlines and Heli Malongo, including			Angola
AEROJET	AO-008/11-07/17 TEJ	TEJ	Angola
GUICANGO	AO-009/11-06/17 YYY	Unknown	Angola
AIR JET	AO-006/11-08/18 MBC	MBC	Angola
BESTFLYA AIRCRAFT MANAGEMENT	AO-015/15-06/17YYY	Unknown	Angola
HELIANG	AO 007/11-08/18 YYY	Unknown	Angola
SJL	AO-014/13-08/18YYY	Unknown	Angola
SONAIR	AO-002/11-08/17 SOR	SOR	Angola
All air carriers certified by the authorities with responsibility for regulatory oversight of Armenia, including			Armenia
AIRCOMPANY ARMENIA	AM AOC 065	NGT	Armenia
ARMENIA AIRWAYS	AM AOC 063	AMW	Armenia

⁽¹⁾ Air carriers listed in Annex A could be permitted to exercise traffic rights by using wet-leased aircraft of an air carrier which is not subject to an operating ban, provided that the relevant safety standards are complied with.

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate ('AOC') Number or Operating Licence Number	ICAO three letter designator	State of the Operator
ARMENIAN HELICOPTERS	AM AOC 067	KAV	Armenia
ATLANTIS ARMENIAN AIRLINES	AM AOC 068	AEU	Armenia
ATLANTIS EUROPEAN AIRWAYS	AM AOC 017	LUR	Armenia
MARS AVIA	AM AOC 066	MRS	Armenia
SKYBALL	AM AOC 069	N/A	Armenia
All air carriers certified by the authorities with responsibility for regulatory oversight of Congo (Brazzaville), including			Congo (Brazzaville)
CANADIAN AIRWAYS CONGO	CG-CTA 006	Unknown	Congo (Brazzaville)
EQUAFLIGHT SERVICES	CG-CTA 002	EKA	Congo (Brazzaville)
EQUAJET	RAC06-007	EKJ	Congo (Brazzaville)
TRANS AIR CONGO	CG-CTA 001	TSG	Congo (Brazzaville)
SOCIETE NOUVELLE AIR CONGO	CG-CTA 004	Unknown	Congo (Brazzaville)
All air carriers certified by the authorities with responsibility for regulatory oversight of Democratic Republic of Congo (DRC), including			Democratic Republic of Congo (DRC)
AIR FAST CONGO	AAC/DG/OPS-09/03	Unknown	Democratic Republic of Congo (DRC)
AIR KATANGA	AAC/DG/OPS-09/08	Unknown	Democratic Republic of Congo (DRC)
BUSY BEE CONGO	AAC/DG/OPS-09/04	Unknown	Democratic Republic of Congo (DRC)
COMPAGNIE AFRICAINE D'AVIATION (CAA)	AAC/DG/OPS-09/02	Unknown	Democratic Republic of Congo (DRC)
CONGO AIRWAYS	AAC/DG/OPS-09/01	Unknown	Democratic Republic of Congo (DRC)
KIN AVIA	AAC/DG/OPS-09/10	Unknown	Democratic Republic of Congo (DRC)
MALU AVIATION	AAC/DG/OPS-09/05	Unknown	Democratic Republic of Congo (DRC)
SERVE AIR CARGO	AAC/DG/OPS-09/07	Unknown	Democratic Republic of Congo (DRC)
SWALA AVIATION	AAC/DG/OPS-09/06	Unknown	Democratic Republic of Congo (DRC)
MWANT JET	AAC/DG/OPS-09/09	Unknown	Democratic Republic of Congo (DRC)

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate ('AOC') Number or Operating Licence Number	ICAO three letter designator	State of the Operator
All air carriers certified by the authorities with responsibility for regulatory oversight of Djibouti, including			Djibouti
DAALLO AIRLINES	Unknown	DAO	Djibouti
All air carriers certified by the authorities with responsibility for regulatory oversight of Equatorial Guinea, including			Equatorial Guinea
CEIBA INTERCONTINENTAL	2011/0001/MTTCT/DGA-C/SOPS	CEL	Equatorial Guinea
CRONOS AIRLINES	2011/0004/MTTCT/DGA-C/SOPS	Unknown	Equatorial Guinea
All air carriers certified by the authorities with responsibility for regulatory oversight of Eritrea, including			Eritrea
ERITREAN AIRLINES	AOC No 004	ERT	Eritrea
NASAIR ERITREA	AOC No 005	NAS	Eritrea
All air carriers certified by the authorities with responsibility for regulatory oversight of Kyrgyzstan, including			Kyrgyzstan
AIR COMPANY AIR KG	50	Unknown	Kyrgyzstan
AIR MANAS	17	MBB	Kyrgyzstan
AVIA TRAFFIC COMPANY	23	AVJ	Kyrgyzstan
SKY KG AIRLINES	41	KGK	Kyrgyzstan
TEZ JET	46	TEZ	Kyrgyzstan
All air carriers certified by the authorities with responsibility for regulatory oversight of Liberia.			Liberia
All air carriers certified by the authorities with responsibility for regulatory oversight of Libya, including			Libya
AFRIQIYAH AIRWAYS	007/01	AAW	Libya
AIR LIBYA	004/01	TLR	Libya
AL MAHA AVIATION	030/18	Unknown	Libya

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate ('AOC') Number or Operating Licence Number	ICAO three letter designator	State of the Operator
BURAQ AIR	002/01	BRQ	Libya
GLOBAL AVIATION AND SERVICES	008/05	GAK	Libya
LIBYAN AIRLINES	001/01	LAA	Libya
LIBYAN WINGS AIRLINES	029/15	LWA	Libya
PETRO AIR	025/08	PEO	Libya
All air carriers certified by the authorities with responsibility for regulatory oversight of Moldova with the exception of Air Moldova, Fly One and Aerotranscargo, including			Moldova
Î.M "VALAN ICC" SRL	MD009	VLN	Moldova
CA "AIM AIR" SRL	MD015	AAM	Moldova
CA "AIR STORK" SRL	MD018	MSB	Moldova
Î M „MEGAVIATION” SRL	MD019	ARM	Moldova
CA "PECOTOX-AIR" SRL	MD020	PXA	Moldova
CA "TERRA AVIA" SRL	MD022	TVR	Moldova
CA "FLY PRO" SRL	MD023	PVV	Moldova
All air carriers certified by the authorities with responsibility for regulatory oversight of Nepal, including			Nepal
AIR DYNASTY HELI. S.	035/2001	Unknown	Nepal
ALTITUDE AIR	085/2016	Unknown	Nepal
BUDDHA AIR	014/1996	BHA	Nepal
FISHTAIL AIR	017/2001	Unknown	Nepal
SUMMIT AIR	064/2010	Unknown	Nepal
HELI EVEREST	086/2016	Unknown	Nepal
HIMALAYA AIRLINES	084/2015	HIM	Nepal
KAILASH HELICOPTER SERVICES	087/2018	Unknown	Nepal
MAKALU AIR	057A/2009	Unknown	Nepal
MANANG AIR PVT	082/2014	Unknown	Nepal
MOUNTAIN HELICOPTERS	055/2009	Unknown	Nepal
PRABHU HELICOPTERS	081/2013	Unknown	Nepal
NEPAL AIRLINES CORPORATION	003/2000	RNA	Nepal

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate ('AOC') Number or Operating Licence Number	ICAO three letter designator	State of the Operator
SAURYA AIRLINES	083/2014	Unknown	Nepal
SHREE AIRLINES	030/2002	SHA	Nepal
SIMRIK AIR	034/2000	Unknown	Nepal
SIMRIK AIRLINES	052/2009	RMK	Nepal
SITA AIR	033/2000	Unknown	Nepal
TARA AIR	053/2009	Unknown	Nepal
YETI AIRLINES	037/2004	NYT	Nepal
All air carriers certified by the authorities with responsibility for regulatory oversight of Sao Tome and Principe, including			Sao Tome and Principe
AFRICA'S CONNECTION	10/AOC/2008	ACH	Sao Tome and Principe
STP AIRWAYS	03/AOC/2006	STP	Sao Tome and Principe
All air carriers certified by the authorities with responsibility for regulatory oversight of Sierra Leone			Sierra Leone
All air carriers certified by the authorities with responsibility for regulatory oversight of Sudan, including			Sudan
ALFA AIRLINES SD	54	AAJ	Sudan
BADR AIRLINES	35	BDR	Sudan
BLUE BIRD AVIATION	11	BLB	Sudan
ELDINDER AVIATION	8	DND	Sudan
GREEN FLAG AVIATION	17	GNF	Sudan
HELEJETIC AIR	57	HJT	Sudan
KATA AIR TRANSPORT	9	KTV	Sudan
KUSH AVIATION CO.	60	KUH	Sudan
NOVA AIRWAYS	46	NOV	Sudan
SUDAN AIRWAYS CO.	1	SUD	Sudan
SUN AIR	51	SNR	Sudan
TARCO AIR	56	TRQ	Sudan'

ANNEX II

‘ANNEX B

LIST OF AIR CARRIERS WHICH ARE SUBJECT TO OPERATIONAL RESTRICTIONS WITHIN THE UNION ⁽¹⁾

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate ('AOC') Number	ICAO three letter designator	State of the Operator	Aircraft type restricted	Registration mark(s) and, when available, construction serial number(s) of restricted aircraft	State of registry
AIR SERVICE COMORES	06-819/TA-15/DGACM	KMD	Comoros	All fleet with the exception of: LET 410 UVP.	All fleet with the exception of: D6-CAM (851336).	Comoros
IRAN AIR	FS100	IRA	Iran	All aircraft of type Fokker F100 and of type Boeing B747	Aircraft of type Fokker F100 as mentioned on the AOC; aircraft of type Boeing B747 as mentioned on the AOC	Iran
AIR KORYO	GAC-AOC/K-OR-01	KOR	North Korea	All fleet with the exception of: 2 aircraft of type TU- 204.	All fleet with the exception of: P-632, P-633.	North Korea

⁽¹⁾ Air carriers listed in Annex B could be permitted to exercise traffic rights by using wet-leased aircraft of an air carrier which is not subject to an operating ban, provided that the relevant safety standards are complied with.'

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2020/737

of 27 May 2020

on the applicability of Article 34 of Directive 2014/25/EU of the European Parliament and of the Council to contracts awarded for activities related to the provision of certain postal services in Denmark

(notified under document C(2020) 3335)

(Only the Danish 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 19 December 2019, Denmark ('the Applicant') submitted to the Commission by email 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 certain postal services in Denmark. The services concerned are described as follows in the Request:
 - (a) National business to consumer (B2C) parcel delivery services – standard parcel deliveries from a business with a delivery contract in Denmark sent to a consumer (door to door or to a collection point in Denmark);
 - (b) International business to consumer (B2C) parcel delivery services:
 - standard parcel deliveries originating from a business with delivery contracts in Denmark sent to a consumer located outside Denmark (door to door or to a parcel collection point);
 - standard parcel deliveries originating from an international business sent to a Danish consumer (door to door or to a collection point in Denmark).
- (3) The Danish Competition and Consumer Authority ('the DCAA'), which is an independent entity of the Danish Ministry of Industry, Business and Financial Affairs, submitted the Request on behalf of Denmark. The Request was initiated by PostNord ⁽³⁾, which is the only entity active in the postal sector in Denmark, subject to public procurement rules.

⁽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 Articles 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⁾ PostNord AB is the name of the holding company of the two merged postal companies Posten AB and Post Danmark that were officially merged on 24 June 2009. Post Danmark is a the subsidiary of PostNord which is established and active in Denmark.

- (4) The Request included a reasoned and substantiated position by the DCAA. The DCAA that is competent in relation to the activities concerned, has thoroughly analysed the conditions for the applicability of Article 34(1) of Directive 2014/25/EU to the activities concerned, in accordance with paragraphs 2 and 3 of Article 34 of that Directive. The position of the DCAA was based on a questionnaire survey to the actual market players as well as potential competitors on the Danish markets for national and international business to consumer standard parcel delivery services.
- (5) On 3 February 2020, the Commission requested additional information from the Applicant. The Applicant's response was received on 10 February 2020. On 16 March 2020, the Applicant submitted further information on the state of competition on the market for international B2C parcel delivery services.
- (6) In accordance with point 1(a) of Annex IV to Directive 2014/25/EU, the implementing acts referred to in Article 35 of that Directive are to be adopted within 90 working days where free access to a given market is presumed on the basis of the first subparagraph of Article 34(3) of Directive 2014/25/EU. In accordance with the third paragraph of point 1 of Annex IV to Directive 2014/25/EU, the deadline for adoption of the implementing acts is to commence on the first working day following the date on which the Commission receives the request referred to in Article 35 (1) of that Directive or, where the information to be supplied with the request is incomplete, on the working day following the receipt of the complete information. The initial deadline therefore expired on 11 May 2020 ⁽⁴⁾. This deadline was extended, by the Commission with the agreement of the Applicant, until 29 May 2020.

2. LEGAL FRAMEWORK

- (7) Directive 2014/25/EU applies to the award of contracts for the pursuit of activities related to postal services, unless the activity is exempted pursuant to Article 34 of that Directive.
- (8) 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 presence of more than one supplier of the products or provider of the services in question.

3. ASSESSMENT

3.1. Unrestricted access to the market

- (9) 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 postal services, Directive 97/67/EC of the European Parliament and of the Council ⁽⁵⁾.
- (10) As confirmed by the Applicant ⁽⁶⁾, and based on the information available to the Commission, Denmark has transposed ⁽⁷⁾ and applies Directive 97/67/EC. Consequently, access to the relevant market is deemed to be unrestricted in accordance with Article 34(3) of Directive 2014/25/EU.

3.2. Direct exposure to competition

- (11) Direct exposure to competition should be evaluated on the basis of 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.

⁽⁴⁾ OJ C 64, 27.2.2020, p. 55.

⁽⁵⁾ Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14).

⁽⁶⁾ See Request, Section 4.1 and Appendix 1 to the Request.

⁽⁷⁾ National transposition act: Postal Law (Lovbekendtgørelse 2017-08-30, nr. 1040 Postlov)

- (12) This Decision is without prejudice to the application of the rules on competition 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 ⁽⁸⁾ as confirmed by the General Court ⁽⁹⁾.
- (13) 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.
- (14) In this context, it is important to mention that, in the markets concerned, not all market players are subject to public procurement rules. On the markets subject to the Request, only PostNord is a contracting entity in the sense of Article 4(1) of Directive 2014/25/EU and, hence, is subject to public procurement rules. 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 public procurement rules.

3.3. Definition of the relevant product market

- (15) The Commission has held in previous decisions ⁽¹⁰⁾ that the market for parcel delivery services can be segmented into express and standard (also referred to as 'deferred') parcel delivery services. This segmentation takes into account that express services are faster and more reliable than a standard service, that each of those services requires a different infrastructure and that express services comprise additional value added service features, such as track and trace services, and are usually more expensive.
- (16) In a previous decision ⁽¹¹⁾, the Commission has also made a distinction between domestic and international parcel delivery services. The Commission held that domestic parcel delivery services are provided by companies operating national distribution networks whereas international parcel delivery consists in collecting parcels to be transported and delivered abroad and are provided by companies that have access to networks in the destination countries.
- (17) The Commission held in previous decisions that standard parcel delivery services to consumers (C2X, i.e. C2C and C2B) and businesses (B2X, i.e. B2B and B2C) constitute distinct product markets. The provision of services to consumers (C2X) and the provision of services to businesses (B2X) require a different infrastructure (and in particular a network of post offices available to private consumers) ⁽¹²⁾.

⁽⁸⁾ 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).

⁽⁹⁾ Judgment of 27 April 2016, *Österreichische Post AG v. Commission*, T-463/14, EU:T:2016:243, paragraph 28.

⁽¹⁰⁾ Commission Implementing Decision 2013/154/EU of 22 March 2013 exempting certain services in the postal sector in Hungary 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 (OJ L 86, 26.3.2013, p. 22); M.5152 of 21 April 2009 – Posten AB/Post Danmark A/S; M.6570 – UPS/TNT Express of 30 January 2013 and M.7630 – FedEx/TNT Express of 8 January 2016.

⁽¹¹⁾ See M.5152 – Posten AB/Post Danmark A/S, of 21 April 2009, paragraphs 54-57, Case M 6570- UPS/TNT of 30 January 2013, paragraphs 165-182, Case M.7630 – FedEx/TNT of 8 January 2016, paragraphs 81-89. See also Commission Decision 2009/46/EC of 19 December 2008 exempting certain services in the postal sector in Sweden 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 sectors (OJ L 19, 23.1.2009, p. 50) and Commission Implementing Decision 2013/154/EU of 22 March 2013 exempting certain services in the postal sector in Hungary 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 (OJ L 86, 26.3.2013, p. 22).

⁽¹²⁾ See COMP/M.5152 – Posten AB/Post Danmark A/S, of 21 April 2009, paragraphs 60; Case AT. 35.141 Deutsche Post AG, paragraph 29; Commission Decision 2007/564/EC of 6 August 2007 exempting certain services in the postal sector in Finland, excluding the Åland Islands, 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 sectors (OJ L 215, 18.8.2007, p. 21); Decision 2009/46/EC and Commission Decision 2010/142/EU of 3 March 2010 exempting certain services in the postal sector in Austria from the application of Directive 2004/17/EC of the European Parliament and of the Council (OJ L 56, 6.3.2010, p. 8).

- (18) In addition, the Commission held in previous decisions that B2B and B2C deliveries are not substitutable. From the supply side perspective, B2C delivery requires a denser network to reach private consignees as oppose to business consignees who are often located in dense clusters. Consequently, the distance between business consignees is shorter than the distance between consumers. The consequences in terms of network coverage and costs may be very significant, differentiating therefore B2B and B2C parcel delivery markets ⁽¹³⁾.
- (19) The Applicant's product market definition is in line with the Commission's previous practice.
- (20) Based on recitals 15 to 19 for the purposes of the assessment under this Decision and without prejudice to competition law, it can be considered that the relevant product markets are:
- (a) the market for domestic B2C standard parcel delivery services;
 - (b) the market for international B2C standard parcel delivery services.

3.4. Definition of the relevant geographic market

- (21) In its previous practice ⁽¹⁴⁾, the Commission took the view that the markets for B2C parcel delivery, irrespective of the distinction between domestic and international delivery services, are national in scope. The Applicant's position is in line with the Commission's practice.
- (22) 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, the Commission considers that the geographic scope of the domestic and international B2C parcel delivery services covers the territory of Denmark.

3.5. Market analysis – domestic B2C parcel delivery services

- (23) The Commission notes that, similar to the majority of the Member States, the Danish market registered a significant growth of parcel volumes in the recent years, mainly due to the impact of e-commerce. According to available information, between 2016 and 2018, the market share of PostNord dropped [...] ⁽¹⁵⁾, from [...] % in terms of value and [...] % in terms of volume, to [...] % in terms of value ⁽¹⁶⁾ and [...] % in terms of volume ⁽¹⁷⁾.
- (24) While the market shares of PostNord decreased over the observed period, the market shares of [...] competitors increased [...] over the observed period. Between 2016 and 2018 the market shares of the [...] competitor, [...], increased from [...] % to [...] % in terms of value and from [...] % to [...] % in terms of volume ⁽¹⁸⁾. Similarly, in the same period, the market shares of [...] increased from [...] % to [...] % in terms of value and from [...] % to [...] % in terms of volume ⁽¹⁹⁾. [...] On this basis, it can be considered that they (i.e. [...]) would be able to exert significant competitive pressure on PostNord. In this context, it is important to observe as well that [...] managed to increase their market [...] in a rather short time period, which suggests that [...] provide an important competitive constraint on PostNord.
- (25) Furthermore, the Commission notes that in the last five years new operators entered the market: DAO365 and Burd Delivery ⁽²⁰⁾ and [...] in the last three years.
- (26) For the purposes of this Decision and without prejudice to competition law, the factors described in recitals 23, 24 and 25, should be taken as an indication of exposure to competition of that activity in Denmark. Consequently, since the conditions set out in Article 34 of Directive 2014/25/EU are met, it should be established that Directive 2014/25/EU should not apply to contracts intended to enable the pursuit of the activity in Denmark.

⁽¹³⁾ See COMP/M.5152 – Posten AB/Post Danmark A/S, of 21 April 2009, paragraphs 61 and 62.

⁽¹⁴⁾ Case COMP/M.5152 – Posten AB/Post Danmark A/S, of 21 April 2009, paragraphs 64-74.

⁽¹⁵⁾ [...] – confidential information

⁽¹⁶⁾ See Request, p. 11, table 5.

⁽¹⁷⁾ See Request, p. 11, table 6.

⁽¹⁸⁾ See Request, p. 11, tables 5 and 6.

⁽¹⁹⁾ See Request, p. 11, tables 5 and 6.

⁽²⁰⁾ See Request, p. 16, Section 5.3.1.

3.6. Market analysis – international B2C parcel delivery services

- (27) The Commission notes that, similar to the domestic B2C parcel delivery market, the international B2C parcel delivery market registered a significant growth in the recent years. However, contrary to the competitive developments observed on a domestic B2C parcel delivery market, the market share of PostNord in the international B2C parcel delivery market remains relatively stable in the last three years both in terms of value ⁽²¹⁾ ([...] % in 2016, [...] % in 2017 and [...] % in 2018) and in terms of volume ⁽²²⁾ ([...] % in 2016, [...] % in 2017 and [...] % in 2018) ⁽²³⁾.
- (28) In parallel, the aggregate market share [...] in terms of value and [...] in terms of volumes. At those levels, it can neither be concluded that these competitors would be able to exert significant competitive pressure on PostNord nor that the market situation may change soon in view of relatively stable market shares of PostNord in the observed period.
- (29) The Applicant argues that an important share of the international B2C parcel delivery services are [...]. According to the Request ⁽²⁴⁾, it appears that the [...].
- (30) However, even under the conservative approach [...], the market share of PostNord in terms of volume is still [...]. Since [...], it is unlikely that the competitive situation will change in the near future.
- (31) The Applicant indicates ⁽²⁵⁾ that [...]. It also suggests that given the growing market for e-commerce in Denmark and in Europe, the demand for international B2C parcel delivery is expected to grow. Finally, the Applicant informed the Commission on 16 March 2020 that PostNord identified additional providers of international B2C parcel delivery services.
- (32) However, the Applicant clarified that, based on the information provided by PostNord, some of these providers (i.e. Prime Cargo, Blue Water, Scan Logistics, GTX Logistics and Link Logistics) do not themselves directly provide parcel service delivery, but instead offer logistics solutions, which includes selling the services of parcel distributors such as PostNord. Additionally, it seems that some other providers (i.e. United Broker, Shipmondo and pakke.dk) offers 'consolidation services', i.e. IT solutions and platforms. The Applicant also acknowledged that the Danish market have a limited scope in terms of size, which may limit the number of parcel delivery services providers.
- (33) The Commission notes that a new competitor, DAO 365, entered the international B2C parcel market in 2019, but there is no available data yet as regards its performance in this market. While companies, such as those identified in recital 32 above may exercise some competitive constraint on PostNord, even if not providing international B2C parcel delivery services themselves, the information provided by the Applicant does not allow to conclude that this is indeed the case. The extent of such potential competitive constraint is particularly uncertain since, as shown in recital 27 above, the market share in terms of both volume and value of PostNord remains stable in the observed period.
- (34) In view of the factors examined in recitals 27 to 33 it cannot be concluded that the international B2C parcel delivery services are directly exposed to competition in Denmark. Consequently, Directive 2014/25/EU should continue to apply to contracts intended to enable the pursuit of those activities in Denmark.

4. CONCLUSION

- (35) This Decision is based on the legal and factual situation as of December 2019 to March 2020 as it appears from the information submitted by the Applicant, and the information publicly available ⁽²⁶⁾. It may be revised, 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.

⁽²¹⁾ See Request, p. 12 table 7.

⁽²²⁾ See Request, p. 12 table 8.

⁽²³⁾ See Request, p. 21 first chart.

⁽²⁴⁾ See Request, p. 13, paragraphs 2 and 3.

⁽²⁵⁾ See reply of the Applicant of 10 February 2020 to the Commission's request for information of 3 February 2020, p. 2.

⁽²⁶⁾ See 'Development of Cross-border E-commerce through Parcel Delivery' – Study for the European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs by WIK Consult, February 2019; 'Annual and Sustainability Report' 2018 PostNord; 'Main Developments in the Postal Sector (2013–2016)' Study for the European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, by Copenhagen Economics, July 2018.

- (36) Since the services related to international B2C parcel delivery services should continue to be subject to Directive 2014/25/EU, it is recalled that procurement contracts covering several activities should 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 must 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,

HAS ADOPTED THIS DECISION:

Article 1

Directive 2014/25/EU shall not apply to contracts awarded by contracting entities and intended to enable activities related to domestic business to consumer (B2C) standard parcel delivery services to be carried out in the territory of Denmark.

Article 2

Directive 2014/25/EU shall continue to apply to contracts awarded by contracting entities and intended to enable the activities related to international B2C standard parcel delivery services to be carried out in the territory of Denmark.

Article 3

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 27 May 2020.

For the Commission
Thierry BRETON
Member of the Commission

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