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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) 2023/263

of 7 February 2023

concerning the authorisation of sepiolitic clay as a feed additive for dairy ruminants, weaned and fattening *Suidae*, salmonids and chickens for fattening*(Text with EEA relevance)*

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such an authorisation. Article 10(2) of that Regulation provides for the re-evaluation of additives authorised pursuant to Council Directive 70/524/EEC ⁽²⁾.
- (2) The substance sepiolitic clay was authorised without a time limit in accordance with Directive 70/524/EEC as a feed additive for all animal species, belonging to the functional group 'binders, anticaking agents and coagulants'. That substance was subsequently included in the Register of feed additives as an existing product, in accordance with Article 10(1), point (b), of Regulation (EC) No 1831/2003.
- (3) In accordance with Article 10(2) of Regulation (EC) No 1831/2003, in conjunction with Article 7 thereof, an application was submitted for the re-evaluation of sepiolitic clay as a feed additive for all animal species, requesting the additive to be classified in the additive category 'technological additives' and in the functional groups 'binders' and 'anticaking agents'. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (4) The European Food Safety Authority ('the Authority') concluded in its opinion of 4 May 2022 ⁽³⁾ that, under the proposed conditions of use, sepiolitic clay is safe for dairy ruminants, weaned piglets, pigs for fattening and other growing *Suidae* at a level of 20 000 mg per kilo of complete feed, for salmonids at a level of 17 600 mg per kilo of complete feed and for chickens for fattening at a level of 10 000 mg per kilo of complete feed, and does not have an adverse effect on consumer safety or the environment. It could not conclude on the safety of the additive for other animal species and categories. The Authority also concluded that the additive poses a risk by inhalation for the user, in particular due to the presence of crystalline silica and of nickel in the additive, and that it is not irritant to the skin or eyes but should be considered as skin and respiratory sensitiser. The Authority concluded that the additive is efficacious as a binder and as an anticaking agent. It also verified the report on the method of analysis in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.⁽²⁾ Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs (OJ L 270, 14.12.1970, p. 1).⁽³⁾ EFSA Journal 2022;20(5):7344.

- (5) The assessment of sepiolitic clay shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that additive should be authorised for dairy ruminants, weaned and fattening *Suidae*, salmonids and chickens for fattening. Supplementary information has been requested by the Commission to the applicant concerning the safety of the additive for the other animal species and categories. The Commission considers that appropriate protective measures should be taken to prevent adverse effects on human health, in particular as regards the users of the additive. Those protective measures should comply with Union legislation on worker safety requirements.
- (6) Since safety reasons do not require the immediate application of the modifications to the conditions of authorisation for the substance concerned, it is appropriate to provide for a transitional period for the interested parties to prepare themselves to meet the new requirements resulting from the authorisation.
- (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

Authorisation

The substance specified in the Annex, belonging to the additive category 'technological additives' and to the functional groups 'binders' and 'anticaking agents', is authorised as an additive in animal nutrition, subject to the conditions laid down in that Annex.

Article 2

Transitional measures

1. The substance specified in the Annex and premixtures containing that substance, which are intended for dairy ruminants, weaned and fattening *Suidae*, salmonids and chickens for fattening and are produced and labelled before 28 August 2023 in accordance with the rules applicable before 28 February 2023 may continue to be placed on the market and used until the existing stocks are exhausted.
2. Compound feed and feed materials containing the substance specified in the Annex, which are intended for dairy ruminants, weaned and fattening *Suidae*, salmonids and chickens for fattening and are produced and labelled before 28 February 2024 in accordance with the rules applicable before 28 February 2023 may continue to be placed on the market and used until the existing stocks are exhausted.

Article 3

Entry into force

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

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

Done at Brussels, 7 February 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Identification number of the additive	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
					mg of additive/kg of complete feedingstuff with a moisture content of 12 %			
Category: technological additives. Functional group: binders								
1g563	Sepiolitic clay	Additive composition Hydrated magnesium silicate of sedimentary origin, containing ≥ 40 % sepiolite and ≥ 25 % illite.	— Dairy ruminants — Weaned and fattening <i>Suidae</i>		-	20 000	1. In the directions for use of the additive and premixtures, the storage conditions shall be indicated. 2. For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address potential risks resulting from their use. Where those risks cannot be eliminated or reduced to a minimum by such procedures and measures, the additive and premixtures shall be used with personal protective equipment, including skin and breathing protection. Particular attention shall be given to compliance with Union legislation on the protection of workers from the inhalation risks related to exposure to crystalline silica and nickel.	28 February 2033
		Powder form	Salmonids		-	17 600		
		Characterisation of the active substance Sepiolite (hydrous magnesium silicate): ≥ 40 % CAS number: 63800-37-3 Einecs number: 264-465-3 Chemical formula: Mg ₄ Si ₆ O ₁₅ (OH) ₂ ·6H ₂ O. Illite (potassium and iron aluminium silicate): ≥ 25 % CAS number: 12173-60-3 Einecs number: 601-803-4 Chemical formula: (K,H ₃ O)(Al,Mg,Fe) ₂ (Si,Al) ₄ O ₁₀ [(OH) ₂ ·(H ₂ O)] Carbonates (dolomite, calcium and magnesium carbonate):≤ 35 % Free of asbestos ⁽¹⁾	Chickens for fattening		-	10 000		

		Analytical method ⁽²⁾ For the characterisation of the feed additive: — X-ray diffraction (XRD) and — X-ray fluorescence (XRF) or atomic absorption spectrometry (AAS)						
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⁽¹⁾ The methods employed were: X-Ray diffraction and Scanning electron microscopy (SEM) with punctual Energy Dispersive X-Ray Analysis (EDAX).

⁽²⁾ Details of the analytical methods are available at the following address of the Reference Laboratory: https://joint-research-centre.ec.europa.eu/eurl-fa-eurl-feed-additives/eurl-fa-authorisation/eurl-fa-evaluation-reports_en

Identification number of the additive	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
					mg of additive/kg of complete feedingstuff with a moisture content of 12 %			
Category: technological additives. Functional group: anticaking agents								
1g563	Sepiolitic clay	Additive composition Hydrated magnesium silicate of sedimentary origin, containing ≥ 40 % sepiolite and ≥ 25 % illite. Powder form Characterisation of the active substance Sepiolite (hydrous magnesium silicate): ≥ 40 % CAS number: 63800-37-3 Einecs number: 264-465-3 Chemical formula: Mg ₄ Si ₆ O ₁₅ (OH) ₂ ·6H ₂ O. Illite (potassium and iron aluminium silicate): ≥ 25 % CAS number: 12173-60-3 Einecs number: 601-803-4 Chemical formula: (K,H ₃ O)(Al,Mg,Fe) ₂ (Si,Al) ₄ O ₁₀ [(OH) ₂ ·(H ₂ O)] Carbonates (dolomite, calcium and magnesium carbonate): ≤ 35 % Free of asbestos ⁽¹⁾	— Dairy ruminants — Weaned and fattening <i>Suidae</i>		-	20 000	1. In the directions for use of the additive and premixtures, the storage conditions shall be indicated. 2. For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address potential risks resulting from their use. Where those risks cannot be eliminated or reduced to a minimum by such procedures and measures, the additive and premixtures shall be used with personal protective equipment, including skin and breathing protection. Particular attention shall be given to compliance with Union legislation on the protection of workers from the inhalation risks related to exposure to crystalline silica and nickel.	28 February 2033
			Salmonids		-	17 600		
			Chickens for fattening		-	10 000		
		Analytical method ⁽²⁾ For the characterisation of the feed additive: — X-ray diffraction (XRD) and — X-ray fluorescence (XRF) or atomic absorption spectrometry (AAS)						

⁽¹⁾ The methods employed were: X-Ray diffraction and Scanning electron microscopy (SEM) with punctual Energy Dispersive X-Ray Analysis (EDAX).

⁽²⁾ Details of the analytical methods are available at the following address of the Reference Laboratory: https://joint-research-centre.ec.europa.eu/eurl-fa-eurl-feed-additives/eurl-fa-authorisation/eurl-fa-evaluation-reports_en

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2023/264

of 18 January 2023

on the applicability of Article 34 of Directive 2014/25/EU of the European Parliament and of the Council to the award of contracts for the activity related to mail service management services in Italy

(notified under document C(2023) 331)

(Only the Italian text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

After consulting the Advisory Committee for Public Contracts,

Whereas:

1. FACTS

- (1) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee for Public Contracts.
- (2) On 19 April 2022, the Italian Republic ('the applicant') submitted a request to the Commission pursuant to Article 35(1) of Directive 2014/25/EU ('the request'), on behalf of Poste Italiane S.p.A. The request complies with the formal requirements set out in Article 1(1) of Commission Implementing Decision (EU) 2016/1804 ⁽²⁾ and in Annex I to that Implementing Decision.
- (3) The request concerns certain services other than postal services, in particular, mailroom management services. Mailroom management services are part of mail service management services, which are services both preceding and subsequent to despatch. Mail service management services include mailroom management services which is the activity that constitutes the subject of this request. Poste Italiane S.p.A. is a postal service provider in Italy and a contracting entity within the meaning of Article 4(2) of Directive 2014/25/EU. Poste Italiane S.p.A. is the only contracting entity in Italy providing postal services within the meaning of Article 13(2), point (b), of Directive 2014/25/EU. Postel S.p.A., which is a 100 % subsidiary of Poste Italiane S.p.A., carries out the activity that constitutes the subject of this request.
- (4) The request was not accompanied by a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activity concerned, which thoroughly analyses the condition for the applicability of Article 34(1) of Directive 2014/25/EU to the activity concerned, in accordance with paragraphs 2 and 3 of that Article. In accordance with point 1(b), second subparagraph, of Annex IV to Directive 2014/25/EU, considering that free access to the market cannot be presumed on the basis of Article 34(3), first subparagraph, of that Directive, the Commission is to adopt an Implementing Decision on the request within 145 working days.

⁽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).

2. LEGAL FRAMEWORK

- (5) Directive 2014/25/EU applies to the award of contracts for the pursuit of activities related to the provision of mail service management services referred to in Article 13(2), point (c)(i), of that Directive and within the meaning of other services than postal services referred to in Article 13(1), point (b), of that Directive, on condition that such services are provided by an entity which also provides postal services within the meaning of Article 13(2), point (b), of that Directive and provided that the conditions set out in Article 34(1) of that Directive are not satisfied in respect of the those services.
- (6) Pursuant to Article 34(1) of Directive 2014/25/EU, contracts intended to enable the performance of an activity to which that Directive applies are not to be subject to that Directive if, in the Member State in which it is carried out, the activity is directly exposed to competition on markets to which access is not restricted.
- (7) Direct exposure to competition is to be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. This assessment is, however, limited by the short deadlines applicable and by the need to rely on the information available to the Commission. That information originates – either from already available sources or from the information obtained in the context of the request pursuant to Article 35 of Directive 2014/25/EU and cannot be supplemented by more time-consuming methods, including, in particular, public inquiries addressed to the economic operators concerned.
- (8) Direct exposure to competition in a particular market should be evaluated on the basis of various criteria, none of which are by themselves decisive.
- (9) For the purposes of assessing whether the relevant operators are subject to direct competition in the markets concerned by this decision, the market share of the main players and the degree of concentration of those markets is to be taken into account.

3. ASSESSMENT

- (10) The aim of this Decision is to establish whether the activity concerned by the request are, in markets to which access is not restricted within the meaning of Article 34 of Directive 2014/25/EU, exposed to a level of competition which ensures that, also in the absence of the procurement discipline brought about by the detailed procurement rules laid down in Directive 2014/25/EU, procurement for the pursuit of the activity concerned will be carried out in a transparent and non-discriminatory manner based on criteria allowing purchasers to identify the solution which overall is the economically most advantageous one.
- (11) This Decision is based on the legal and factual situation as of April 2022 and on the information submitted by the applicant, the authorities of Italy and the information that is publicly available. It may be revised, should significant changes in the legal or factual situation mean that the conditions for the applicability of Article 34(1) of Directive 2014/25/EU are no longer met.

3.1. Unrestricted access to the market

- (12) Access to a market is deemed to be unrestricted if the Member State concerned has implemented and applied the relevant Union legal acts opening a certain sector or a part of it. Those legal acts are listed in Annex III to Directive 2014/25/EU. The activity, which is subject to this request, does not fall within the scope of Directive 97/67/EC of the European Parliament and of the Council ⁽³⁾, which is listed in Annex III to Directive 2014/25/EU, since the provision of mail service management services, including mailroom management services, concern services other than postal services. Mailroom management services concern activities that are clearly distinguished from the elements of the postal value chain (clearance, sorting, transport, delivery) and while they may be provided by postal service providers, there is no intrinsic link that would reserve or directly favour postal service providers in undertaking these activities.

⁽³⁾ 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).

- (13) Where free access to a given market cannot be presumed on the basis of the implementation of appropriate Union legislation, it must be demonstrated that access to the market in question is free *de jure* and *de facto* in accordance with Article 34(3), second subparagraph, of Directive 2014/25/EU. Consequently, the applicant must demonstrate that access to the market for the provision of mail service management services is free *de jure* and *de facto*.
- (14) As far as *de jure* free access to the market of mailroom management services is concerned and based on the information submitted by the applicant, there are no regulatory barriers preventing access to that market. Until 2020, providers of those services had to apply for accreditation as certification bodies at the Agency for Digital Italy (AgID) ⁽⁴⁾. Following the latest revision of the Digital Administration Code, such accreditation is no longer needed ⁽⁵⁾. Hence, providers do not need to apply for prior authorisation for performing the services concerned ⁽⁶⁾.
- (15) As far as *de facto* free access to the market of mailroom management services is concerned, the Commission notes that the market is characterised by significant competition. According to the information provided submitted by the applicant, there is a high degree of fragmentation, with around 700 operators, none of which has a market share above 4 % and which offer a wide range of products that are highly substitutable ⁽⁷⁾. Moreover, as regards the various factors influencing access to the relevant market, the Commission notes that there are no technical standards or other technological barriers to market access ⁽⁸⁾. The market is mostly characterised by operators specialising in particular technologies or processes ⁽⁹⁾. The absence of substantial barriers to entry is also confirmed by the fact that companies with a market share of less than 2 % have been operating on the market for years and they are able to remain in the market and be competitive ⁽¹⁰⁾.
- (16) The Commission therefore concludes that access to the market of mail service management services should be considered free *de jure* and *de facto* in accordance with Article 34(3), second subparagraph, of Directive 2014/25/EU.

3.2. Competition assessment

3.2.1. Relevant product market definition

- (17) In its previous Decision ⁽¹¹⁾, the Commission has found that mailroom management offers customers a solution for the processing of mail within an organisation. Depending on the relevant demand, customised solutions are elaborated that include the outsourcing of individual activities or even the entire processing of mail.
- (18) In its previous Decision ⁽¹²⁾, the Commission has found that the market for mailroom management services include all services that provide support with regard to the internal mail processing within a company. Those internal processes are often outsourced to third parties in order to increase efficiency, and those third parties often combine them with additional activities in order to use the capacity of persons performing that activity to the best possible extent. That is why various office services such as scanning, copying and phone services are provided in addition to the mail processing services ⁽¹³⁾.

⁽⁴⁾ The Digital Administration Code was approved by Legislative Decree No 82/2005, Official Gazette, No 112-S.O. No 93 of 16 May 2005.

⁽⁵⁾ Based on Decree-Law No 76 of 16 July 2020, converted into Law No 120 of 11 September 2020.

⁽⁶⁾ Only if such a service is offered to public administrations, it is necessary to comply with quality, safety and organisational requirements and with the conservation criteria set out in the guidelines 'on training, management and storage of computer documents' and 'Regulation on criteria for the provision of computer document retention services'. AgID is the competent authority in Italy for monitoring compliance with these requirements.

⁽⁷⁾ Request, point 3.1.2.

⁽⁸⁾ Request, point 5.3.3.

⁽⁹⁾ Request, point 5.3.3.

⁽¹⁰⁾ Request, point 5.3.3.

⁽¹¹⁾ Commission Implementing Decision 2014/184/EU of 2 April 2014 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 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 101, 4.4.2014, p. 4).

⁽¹²⁾ Ibid.

⁽¹³⁾ Ibid.

- (19) Mailroom management services, according to this Decision ⁽¹⁴⁾, can be provided in the form of staff leasing or service contracts. Therefore, the market comprises the performance of activities in the form of service contracts as well as staff leasing ⁽¹⁵⁾.
- (20) In line with the Commission's previous practice and the application, the relevant product market is the market for mailroom management services including all services that provide support with regard to the internal mail processing within a company ⁽¹⁶⁾.

3.2.2. Relevant geographical market definition

- (21) The applicant submits that the market of mailroom management services is national in scope ⁽¹⁷⁾. According to the applicant, this is also due to the fact, that the postal services to which the mailroom management service is attached have a national dimension, according to Commission's previous practice ⁽¹⁸⁾.
- (22) According to the applicant, the market for mailroom management services in Italy is national in scope by the very nature of the services offered and because it is defined as such in the relevant legal framework. The keeping of documents is mandatory for public authorities and tender procedures launched by the public authorities for the award of mailroom management services must comply with the rules on public procurement. Hence, in the applicant's view, the competitive conditions are considered to be homogeneous at national level ⁽¹⁹⁾.
- (23) In previous decision of the Commission ⁽²⁰⁾ in relation to the delivery market for printing and packaging services, when justifying that the relevant market was national in scope, the Commission referred to the issue of whether those services were performed for potential or actual national senders in view of optimising their internal processes and reduce their costs as a criterion. In the present case, the applicant points out that the main customers of Poste Italiane are undertakings located in Italy and intend to optimise their internal mail management processes ⁽²¹⁾.
- (24) The Commission agrees with the applicant's proposed geographical market definition. Given that there are no reasons to assume a wider or a narrower scope of the market, for the purposes of this Decision, and without prejudice to competition law, the geographical market for mail service management services is national in scope.

3.2.3. Market analysis

- (25) Considering the market definition above (i.e. for mailroom management services), which is without prejudice to competition law, Poste Italiane had, according to the request ⁽²²⁾, a market share of [0-5] % in 2019, [0-5] % in 2020 and [0-5] % in 2021 ⁽²³⁾.
- (26) The relevant market is highly fragmented. A large number of undertakings are active in this market, none of whom has a market share above 4 % ⁽²⁴⁾. This means that those undertakings are able to bring a significant competitive pressure on Poste Italiane.
- (27) The factors listed in recitals 25 and 26 should therefore be taken as an indication of direct exposure to competition.

⁽¹⁴⁾ Ibid.

⁽¹⁵⁾ Ibid.

⁽¹⁶⁾ Request, point 3.1.1.

⁽¹⁷⁾ Request, point 3.2.

⁽¹⁸⁾ Commission Implementing Decision 2014/184/EU, recital 10.

⁽¹⁹⁾ Request, point 3.2.

⁽²⁰⁾ Commission Implementing Decision (EU) 2016/1195 of 4 July 2016 exempting courier services and other services than postal services in Poland from the application of Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 197, 22.7.2016, p. 4).

⁽²¹⁾ Request, point 3.2.

⁽²²⁾ Request, point 5.2.2.

⁽²³⁾ The market share for 2021 is based on estimates by Poste Italiane.

⁽²⁴⁾ Request, point 5.2.3, table 4.

- (28) According to the applicant, the competitive conditions for this set of services are sufficiently homogeneous, creating a single target market on a national scale. In the applicant's view, the categories of products and services that constitute the relevant market are to be regarded as interchangeable for users in view of their features, prices and intended purposes. The categories of products and services concern dematerialisation, those are services based on 'human intensive' preparation, scanning and data entry activities, electronic archiving and digital storage concerning services involving the storage of electronic documents that can be filed or stored by law, hardware and software supplies, platform and system integration services, keeping physical archives, concerning services involving the taking charge, transportation and storage of paper documents and files through the management of paper stores of individual companies or groups belonging to the same sector ⁽²⁵⁾.
- (29) The Commission agrees with the applicant's view. The market is competitive, in that the users and consumers can choose between a range of products and services with similar features and the supplier does not encounter obstacles in supplying the products and services in question on this market. Physical archiving is gradually being replaced by digital services, which are, moreover, characterised by even lower investment costs, mainly because there is no need to acquire stores for document archiving.
- (30) There is a constant growth in the use of digital technologies by Italian undertakings, public authorities and users in general. The progressive digitisation of document services has increased the number of documents exchanged through digital services, including the mailroom management service ⁽²⁶⁾.
- (31) Considering the structure of the market and the absence of regulatory barriers to entry or obligations to comply with technical standards of any kind, the Commission notes that there may be further entries by newcomers. The market includes undertakings with a share of less than 2 %, which are active on the market and which have been operating on the market for years and they are able to remain in the market and be competitive. The Commission notes, that the presence of a substantial wide number of operators confirms the absence of substantial barriers to entry to the market. These factors, together with the low market share of Poste Italiane in the market confirm that they can bring a significant competitive pressure on Poste Italiane and that the activity is directly exposed to competition.

4. CONCLUSION

- (32) In view of the factors examined in recitals 5 to 31, the condition of direct exposure to competition laid down in Article 34(1) of Directive 2014/25/EU should be considered to be met in Italy in respect of the activity related to mail service management services.
- (33) Since the condition of unrestricted access to the market is deemed to be met, Directive 2014/25/EU should not apply when contracting entities award contracts intended to enable the activity referred to in recital 32 of this Decision to be carried out in Italy, nor when design contests are organised for the pursuit of such an activity in that geographic area.
- (34) This Decision is without prejudice to the application of the Union rules on competition and of the provisions in 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 or Council Regulation (EC) No 139/2004 ⁽²⁷⁾ as confirmed by the General Court ⁽²⁸⁾,

⁽²⁵⁾ Request, point 3.1.2.

⁽²⁶⁾ Request, point 3.1.2.

⁽²⁷⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).

⁽²⁸⁾ Judgment of the General Court of 27 April 2016, *Österreichische Post AG v. Commission*, T-463/14, ECLI:EU:T:2016:243, paragraph 28. See also Directive 2014/25/EU, recital 44.

HAS ADOPTED THIS DECISION:

Article 1

Directive 2014/25/EU shall not apply to the award of contracts by contracting entities and intended to enable the activity related to mail service management services to be carried out in Italy.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 18 January 2023.

For the Commission
Thierry BRETON
Member of the Commission

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