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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2020/1044

of 8 May 2020

supplementing Regulation (EU) 2018/1999 of the European Parliament and of the Council with regard to values for global warming potentials and the inventory guidelines and with regard to the Union inventory system and repealing Commission Delegated Regulation (EU) No 666/2014

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council⁽¹⁾, and in particular Article 26(6)(b) and Article 37(7) thereof,

Whereas:

- (1) The mechanism for monitoring and reporting greenhouse gas emissions as laid down in Regulation (EU) No 525/2013 of the European Parliament and of the Council⁽²⁾ sets out the rules for monitoring and reporting of greenhouse gas emissions under the climate policy. The provisions of that mechanism are fully integrated in Regulation (EU) 2018/1999, which repeals Regulation (EU) No 525/2013 from 1 January 2021. Within that mechanism, it is necessary to adopt values for global warming potentials and specify the inventory guidelines.
- (2) Concerning the global warming potentials, the 1st meeting of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) serving as the meeting of the Parties to the 2015 Paris Agreement on climate change following the 21st Conference of the Parties to the UNFCCC (the 'Paris Agreement') established a common metric for translating greenhouse gases to CO₂ equivalents for the purposes of reporting of greenhouse gas inventories. That common metric is based on global warming potential values set out in the Intergovernmental Panel for Climate Change (IPCC) Fifth Assessment Report⁽³⁾. The values for global warming potentials should take account of that common metric.

⁽¹⁾ OJ L 328, 21.12.2018, p. 1.

⁽²⁾ Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).

⁽³⁾ Column 'GWP 100-year' in Table 8.A.1 of Appendix 8.A of the report 'Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change', p. 731; available at <https://www.ipcc.ch/assessment-report/ar5/>

- (3) The greenhouse gas inventory guidelines should be specified in accordance with international developments. In addition to the 2006 IPCC Guidelines for National Greenhouse Gas Inventories, the Member States and the Commission should take into account the modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement set out in the Annex to Decision 18/CMA.1 of the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Paris Agreement ('Decision 18/CMA.1'). Moreover, Member States are encouraged to use the 2013 Supplement to the 2006 IPCC Guidelines for National Greenhouse Gas Inventories: Wetlands.
- (4) To ensure the quality of the Union inventory, further objectives of the Union quality assurance and quality control programme should be set out.
- (5) In order to ensure the completeness of the Union inventory within the meaning of Decision 18/CMA.1, it is necessary to set out the methodologies and the data to be used by the Commission when preparing estimates for data missing from a Member State inventory pursuant to Article 37(5) of Regulation (EU) 2018/1999.
- (6) In order to ensure the timeliness, transparency, accuracy, consistency, comparability and completeness, of the Union inventory, it is necessary to specify the content of the initial checks carried out on the greenhouse gas inventory data submitted by the Member States. The assessment of accuracy as part of the initial checks should ensure that the Member States do not systematically over- or underestimate the actual emissions and removals in relation to Union key categories. Moreover, as the reporting of greenhouse gas emissions by sources and removals by sinks from the land use, land use change and forestry (LULUCF) sector is an integral part of the greenhouse gas inventory reporting and due to the inclusion of the LULUCF sector in the 2030 climate target, the initial checks in the LULUCF sector should be aligned with those carried out in the other sectors. In the LULUCF sector, the reported land use and land use change activity data may be compared with information derived from the Union and Member State programmes and surveys, such as Copernicus and LUCAS.
- (7) The estimates to complete the missing national inventory data to compile the Union inventory are prepared in accordance with the greenhouse gas inventory guidelines. Those estimates cannot be determined without applying values for global warming potential of greenhouse gases. As the rules on global warming potentials, inventory guidelines and the Union inventory system are substantively linked, it is appropriate to include them in one Delegated Regulation.
- (8) In order to ensure consistency with the date of application of the relevant provisions of Regulation (EU) 2018/1999, this Regulation should apply from 1 January 2021.
- (9) In accordance with Articles 57 and 58 of Regulation (EU) 2018/1999, Regulation (EU) No 525/2013 is repealed with the effect from 1 January 2021, with the exception of Article 7 of that Regulation, which is to apply to the reports containing data from the years 2018, 2019 and 2020. Commission Delegated Regulation (EU) No 666/2014 ⁽⁴⁾ should therefore be repealed from 1 January 2021, however, its Articles 6 and 7 should continue to have effect for the reports containing data required for the years 2019 and 2020,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation applies to the reports submitted by the Member States containing data required for the year 2021 onwards.

Article 2

Global warming potentials

The Member States and the Commission shall use the global warming potentials listed in Annex I to this Regulation for the purpose of determining and reporting greenhouse gas inventories data pursuant to paragraphs 3, 4 and 5 of Article 26 of Regulation (EU) 2018/1999.

⁽⁴⁾ Commission Delegated Regulation (EU) No 666/2014 of 12 March 2014 establishing substantive requirements for a Union inventory system and taking into account changes in the global warming potentials and internationally agreed inventory guidelines pursuant to Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 179, 19.6.2014, p. 26).

*Article 3***Greenhouse gas inventory guidelines**

The Member States and the Commission shall determine greenhouse gas inventories referred to in paragraphs 3, 4 and 5 of Article 26 of Regulation (EU) 2018/1999 in accordance with:

- (a) the 2006 Intergovernmental Panel on Climate Change (IPCC) Guidelines for National Greenhouse Gas Inventories;
- (b) the modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement set out in the Annex to Decision 18/CMA.1 of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement ('Decision 18/CMA.1').

*Article 4***Quality assurance and quality control programme objectives**

1. The Commission shall manage, maintain and seek to continuously improve the Union greenhouse gas inventory system based on the following quality assurance and quality control programme objectives:

- (a) that the Union greenhouse gas inventory is complete by, where relevant, applying the procedure set out in Article 37(5) of Regulation (EU) 2018/1999, in consultation with the Member State concerned;
- (b) that the Union greenhouse gas inventory system provides a transparent aggregation of Member States' greenhouse gas emissions by sources and removals by sinks as well as overviews of methodological descriptions for Union key categories, and reflects in a transparent manner the contribution of Member States' emissions by sources and removals by sinks to the Union greenhouse gas inventory;
- (c) that the total of the Union's greenhouse gas emissions by sources and removals by sinks for a reporting year is equal to the sum of Member States' greenhouse gas emissions by sources and removals by sinks reported pursuant to paragraphs 3, 4 and 5 of Article 26 of Regulation (EU) 2018/1999 for that same year;
- (d) that the Union greenhouse gas inventory includes a consistent time series of emissions by sources and removals by sinks for all reported years.

2. The Commission and the Member States shall increase, where possible, the comparability of national greenhouse gas inventories by seeking synergy of methods, activity data, notation keys and the allocation of emissions by sources and removals by sinks by Member States, where appropriate.

3. The quality assurance and quality control programme objectives of the Union inventory shall complement the quality assurance and quality control programmes objectives implemented by the Member States.

4. Member States shall ensure the quality of activity data, emission factors and other parameters used for their national greenhouse gas inventory.

*Article 5***Gap filling**

1. The Commission estimates for completing the inventory data submitted by a Member State as referred to in Article 37(5) of Regulation (EU) 2018/1999 shall be based on the following methodologies and data:

- (a) where a Member State has submitted in the previous reporting year a consistent time series of estimates for the relevant source category and:
 - (i) that Member State has submitted an approximated greenhouse gas inventory for the year $X - 1$ pursuant to Article 26(2) of Regulation (EU) 2018/1999 that includes the missing estimate, on the data from that approximated greenhouse gas inventory;
 - (ii) that Member State has not submitted an approximated greenhouse gas inventory for the year $X - 1$ under Article 26(2) of Regulation (EU) 2018/1999, but the Union has estimated approximated greenhouse gas emissions for the year $X - 1$ for that Member State in accordance with Article 26(2) of Regulation (EU) 2018/1999, on the data from that Union approximated greenhouse gas inventory;

- (iii) the use of the data from the approximated greenhouse gas inventory of the Member State is not possible or may lead to a highly inaccurate estimation, for missing estimates in the energy sector, on the energy statistics data obtained in accordance with Regulation (EC) No 1099/2008 of the European Parliament and of the Council ⁽⁵⁾;
 - (iv) the use of the data from the approximated greenhouse gas inventory is not possible or may lead to a highly inaccurate estimation, for missing estimates in non-energy sectors, on estimation methodologies consistent with the technical advice on gap filling in Section 2.2.3 of the 2006 IPCC Guidelines for National Greenhouse Gas Inventories (Vol. 1) using, where appropriate, European statistics;
 - (b) where an estimate of an emission by source or removal by sink for the relevant category was subject to technical corrections in accordance with Article 38(2)(d) of Regulation (EU) 2018/1999 in the latest review prior to the submission and the Member State concerned has not submitted a revised estimate, on the method used by the technical expert review team to calculate the technical correction;
 - (c) where a consistent time series of reported estimates for the relevant source category is not available, on estimation methodologies consistent with the technical advice on gap filling in Section 2.2.3 of the 2006 IPCC Guidelines for National Greenhouse Gas Inventories (Vol. 1).
2. The Commission shall prepare the estimates referred to in paragraph 1 by 31 March of the reporting year in consultation and close cooperation with the Member State concerned.
3. The Member State concerned shall use the estimates referred to in paragraph 1 for its submission of national inventories to the UNFCCC Secretariat pursuant to Article 26(4) of Regulation (EU) 2018/1999.

Article 6

Initial checks

The initial checks performed by the Commission pursuant to Article 37(4) of Regulation (EU) 2018/1999 may include:

- (a) an assessment whether all categories required under the modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement set out in the Annex to Decision 18/CMA.1 and all greenhouse gases referred to in Annex V of Regulation (EU) 2018/1999 are reported by the Member State;
- (b) an assessment whether emissions by sources and removals by sinks data time series are consistent;
- (c) an assessment whether implied emission factors across Member States are comparable taking into account the IPCC default emission factors for different national circumstances;
- (d) an assessment of the use of 'Not Estimated' notation keys where IPCC Tier 1 methodologies exist and where the use of the notation key is not justified in accordance with point 32 of the Annex to Decision 18/CMA.1;
- (e) an analysis of recalculations performed for the greenhouse gas inventory submission, including whether the recalculations are based on methodological changes;
- (f) a comparison of the verified greenhouse gas emissions reported under the European Union's emission trading system with the greenhouse gas emissions reported pursuant to Article 26(3) of Regulation (EU) 2018/1999;
- (g) a comparison of the results of Eurostat's reference approach with the Member States' reference approach;
- (h) a comparison of the results of Eurostat's sectoral approach with the Member States' sectoral approach;
- (i) an assessment whether issues from earlier Union initial checks and reviews as well as recommendations from UNFCCC reviews have been implemented by the Member State;
- (j) an assessment of the accuracy of Member States' emissions by sources and removals by sinks estimates in relation to Union key categories;

⁽⁵⁾ Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics (OJ L 304, 14.11.2008, p. 1).

- (k) an assessment of the transparency and completeness of the methodological descriptions reported by Member States for the Union key categories.
- (l) an assessment of monitoring and reporting of emissions by sources and removals by sinks in the land use, land use change and forestry (LULUCF) sector pursuant to Part 3 of Annex V to Regulation (EU) 2018/1999, including the assignment of key categories, Tier methodology applied, and a comparison of reported land use and land use change activity data with information derived from the Union and Member State programmes and surveys.

Article 7

Repeal

Delegated Regulation (EU) No 666/2014 is repealed with effect from 1 January 2021, subject to the transitional provision laid down in Article 8 of this Regulation.

Article 8

Transitional provision

By way of derogation from Article 7 of this Regulation, Articles 6 and 7 of Delegated Regulation (EU) No 666/2014 shall continue to have effect for the reports containing data required for the years 2019 and 2020.

Article 9

Entry into force and application

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

It shall apply from 1 January 2021.

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

Done at Brussels, 8 May 2020.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

GLOBAL WARMING POTENTIALS

Acronym, common name or chemical name	Global warming potential
Carbon dioxide (CO ₂)	1
Methane (CH ₄)	28
Nitrous oxide (N ₂ O)	265
Sulphur hexafluoride (SF ₆)	23 500
Nitrogen trifluoride (NF ₃)	16 100
Hydrofluorocarbons (HFCs):	
HFC-23 CHF ₃	12 400
HFC-32 CH ₂ F ₂	677
HFC-41 CH ₃ F	116
HFC-125 CHF ₂ CF ₃	3 170
HFC-134 CHF ₂ CHF ₂	1 120
HFC-134a CH ₂ FCF ₃	1 300
HFC-143 CH ₂ FCHF ₂	328
HFC-143a CH ₃ CF ₃	4 800
HFC-152 CH ₂ FCH ₂ F	16
HFC-152a CH ₃ CHF ₂	138
HFC-161 CH ₃ CH ₂ F	4
HFC-227ea CF ₃ CHFCF ₃	3 350
HFC-236cb CF ₃ CF ₂ CH ₂ F	1 210
HFC-236ea CF ₃ CHFCF ₂	1 330
HFC-236fa CF ₃ CH ₂ CF ₃	8 060
HFC-245fa CHF ₂ CH ₂ CF ₃	858
HFC-245ca CH ₂ FCF ₂ CHF ₂	716
HFC-365mfc CH ₃ CF ₂ CH ₂ CF ₃	804
HFC-43-10mee CF ₃ CHFCF ₂ CF ₃ or (C ₅ H ₂ F ₁₀)	1 650
Perfluorocarbons (PFCs):	
PFC-14, Perfluoromethane, CF ₄	6 630
PFC-116, Perfluoroethane, C ₂ F ₆	11 100
PFC-218, Perfluoropropane, C ₃ F ₈	8 900
PFC-318, Perfluorocyclobutane, c-C ₄ F ₈	9 540
Perfluorocyclopropane c-C ₃ F ₆	9 200
PFC-3-1-10, Perfluorobutane, C ₄ F ₁₀	9 200
PFC-4-1-12, Perfluoropentane, C ₅ F ₁₂	8 550
PFC-5-1-14, Perfluorohexane, C ₆ F ₁₄	7 910
PFC-9-1-18, C ₁₀ F ₁₈	7 190

COMMISSION REGULATION (EU) 2020/1045**of 13 July 2020****establishing a fisheries closure for bluefin tuna in the Atlantic Ocean, east of 45° W, and Mediterranean for vessels flying the flag of Greece**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) 2020/123 ⁽²⁾ lays down quotas for 2020.
- (2) According to the information received by the Commission, catches of the stock of bluefin tuna in the Atlantic Ocean, east of 45° W, and Mediterranean by vessels flying the flag of or registered in Greece have exhausted the quota allocated for 2020.
- (3) It is therefore necessary to prohibit certain fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to Greece for the stock of bluefin tuna in the Atlantic Ocean, east of 45° W, and Mediterranean for 2020 referred to in the Annex shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing activities for the stock referred to in Article 1 by vessels flying the flag of or registered in Greece shall be prohibited from the date set out in the Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

*Article 3***Entry into force**

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, 13 July 2020.

*For the Commission,
On behalf of the President,
Virginijus SINKEVIČIUS
Member of the Commission*

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ Council Regulation (EU) 2020/123 of 27 January 2020 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (OJ L 25, 30.1.2020, p. 1).

ANNEX

No	08/TQ/123
Member State	Greece
Stock	BFT/AE45WM
Species	Bluefin tuna (<i>Thunnus thynnus</i>)
Zone	Atlantic Ocean, east of 45° W, and Mediterranean
Closing date	22.6.2020 at 24.00

COMMISSION REGULATION (EU) 2020/1046**of 13 July 2020****establishing a fisheries closure for bluefin tuna in specific archipelagos for artisanal vessels flying the flag of Greece**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) 2020/123 ⁽²⁾ lays down quotas for 2020.
- (2) According to the information received by the Commission, catches of the stock of bluefin tuna in specific archipelagos by artisanal vessels flying the flag of or registered in Greece have exhausted the quota allocated for 2020.
- (3) It is therefore necessary to prohibit certain fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to Greece for the stock of bluefin tuna in specific archipelagos for 2020 referred to in the Annex shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing activities for the stock referred to in Article 1 by artisanal vessels flying the flag of or registered in Greece shall be prohibited from the date set out in the Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those artisanal vessels after that date.

*Article 3***Entry into force**

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

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ Council Regulation (EU) 2020/123 of 27 January 2020 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (OJ L 25, 30.1.2020, p. 1).

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

Done at Brussels, 13 July 2020.

*For the Commission,
On behalf of the President,
Virginijus SINKEVIČIUS
Member of the Commission*

ANNEX

No	07/TQ/123
Member State	Greece (Artisanal vessels)
Stock	BFT/AVARCH
Species	Bluefin tuna (<i>Thunnus thynnus</i>)
Zone	Specific archipelagos in Greece (Ionian Islands), Spain (Canary Islands) and Portugal (Azores and Madeira)
Closing Date	17.6.2020 at 24.00

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2020/1047

of 15 July 2020

allowing Portugal to authorise biocidal products consisting of *in situ* generated nitrogen for the protection of cultural heritage

(Only the Portuguese text is authentic)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ⁽¹⁾, and in particular Article 55(3) thereof,

After consulting the Standing Committee for Biocidal Products,

Whereas:

- (1) Annex I to Regulation (EU) No 528/2012 contains active substances which have a more favourable environmental or human or animal health profile. Products containing these active substances may therefore be authorised under a simplified procedure. Nitrogen is included in Annex I to Regulation (EU) No 528/2012 subject to the restriction that it is used in limited quantities in ready-for-use canisters.
- (2) Pursuant to Article 86 of Regulation (EU) No 528/2012, nitrogen is approved as active substance for use in biocidal products of product-type 18, insecticides ⁽²⁾. Biocidal products consisting of nitrogen as approved are authorised in several Member States including Portugal and are supplied in gas cylinders ⁽³⁾.
- (3) Nitrogen can also be generated *in situ* from ambient air. *In situ* generated nitrogen is currently not approved for use in the Union and it is neither listed in Annex I to Regulation (EU) No 528/2012, nor inserted in the list of active substances included in the review programme of existing active substances in biocidal products in Annex II to Commission Delegated Regulation (EU) No 1062/2014 ⁽⁴⁾.
- (4) Pursuant to Article 55(3) of Regulation (EU) No 528/2012, on 11 February 2020 Portugal submitted to the Commission an application for derogation from Article 19(1)(a) of that Regulation asking to allow it to authorise biocidal products consisting of nitrogen generated *in situ* from ambient air for the protection of cultural heritage ('the application').
- (5) Cultural heritage can be damaged by a wide range of harmful organisms, from insects to microorganisms. The presence of those organisms not only can lead to the loss of the cultural good itself, but also poses the risk of those harmful organisms being spread to other objects nearby. Without an appropriate treatment, objects could be irretrievably damaged, putting the cultural heritage at serious risk.
- (6) *In situ* generated nitrogen is used to create a controlled atmosphere with a very low concentration of oxygen (anoxia) in permanent or temporary sealed treatment tents or chambers for the control of harmful organisms on cultural heritage objects. Nitrogen is separated from the ambient air and is pumped into the treatment tent or chamber, where the nitrogen content of the atmosphere is increased to 99 % approximately and consequently oxygen is almost completely depleted. The humidity of the nitrogen pumped into the treatment area is set according to the demands of the object to be treated. Harmful organisms cannot survive under the conditions created in the treatment tent or chamber.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ Commission Directive 2009/89/EC of 30 July 2009 amending Directive 98/8/EC of the European Parliament and of the Council to include nitrogen as an active substance in Annex I thereto (OJ L 199, 31.7.2009, p. 19).

⁽³⁾ List of authorised products available at <https://echa.europa.eu/fr/information-on-chemicals/biocidal-products>

⁽⁴⁾ Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 294, 10.10.2014, p. 1).

- (7) As stated in the application, the development in the past decades of the technique of nitrogen-based anoxia for the treatment of cultural heritage objects allowed cultural institutions (museums, archives, libraries, conservation-restoration centres, etc.) to move away from the use of highly toxic substances used previously.
- (8) According to the information submitted by Portugal, the use of *in situ* generated nitrogen appears to be the only effective technique for the control of harmful organisms that can be used for all types of materials and combinations of materials present in cultural institutions without altering the macroscopic and molecular features of the objects. This technique can be applied for the treatment of especially sensitive materials, such as ethnographic heritage, mummies, contemporary art, for their conservation.
- (9) The method of anoxia or modified or controlled atmosphere is listed in the standard EN 16790:2016 'Conservation of cultural heritage – Integrated pest management (IPM) for protection of cultural heritage' and nitrogen is described in this standard as 'most used' for creating anoxia.
- (10) Other techniques for the control of harmful organisms are available, such as gamma radiation, thermal shock techniques (high or low temperatures), microwaves. In addition, other active substances can be used for that purpose. However, according to Portugal, each of these techniques has limitations in terms of materials on which they can be applied.
- (11) As stated in the application, other active substances are hardly used any more in cultural institutions, due to their hazard profile. After treatment with these substances, the residues on the treated objects may be progressively released to the environment, which poses a risk to human health. This is particularly relevant for cultural institutions that are open for visitors.
- (12) According to the information submitted by Portugal, thermal shock processes (freezing or heat treatments) have undesired effects on several materials. Temperature increase or decrease may cause irreversible damage to cultural heritage objects, especially for organic components. Thermal processes are generally not suitable for the treatment of paintings, wax-, oil- or protein-bound polychrome objects, since during the treatment temperature-dependent properties of the materials can change causing irreversible damage to the objects. In addition, high temperatures may cause the softening of glue in glued objects and the shrinking of materials such as leather and vellum.
- (13) According to the information in the application, the use of nitrogen in cylinders is not an appropriate alternative for cultural institutions, as it presents practical disadvantages. The limited quantities in cylinders require frequent transport and a separate storage facility. Moreover, the point of load of the floors in some historical museum buildings might be exceeded due to the weight of the required number of cylinders. In addition, the treatment with nitrogen in cylinders would generate high costs for the cultural institutions.
- (14) According to the application, during the last decades many cultural institutions invested in the construction of treatment chambers and the purchase of nitrogen generators. Due to its versatility and suitability for the treatment of all materials, *in situ* generated nitrogen anoxia is very widely used in the conservation of cultural heritage.
- (15) Requesting cultural institutions to use several techniques to control harmful organisms – each of them suitable for specific materials and objects – instead of using one technique already used and suitable to all materials, would involve additional costs for cultural institutions and make it more complicated for them to reach the objective of moving away from the use of more hazardous active substances in their IPM.
- (16) Discussions related to a possible derogation pursuant to Article 55(3) of Regulation (EU) No 528/2012 for *in situ* generated nitrogen took place in several meetings ^(*) of the Commission expert group of Competent Authorities for Biocidal Products in 2019.

^(*) 83rd, 84th, 85th and 86th meeting of the Commission Expert Group of representatives of Member States Competent Authorities for the implementation of Regulation (EU) No 528/2012, held in May 2019, July 2019, September 2019 and November 2019, respectively. The minutes of the meetings are available at https://ec.europa.eu/health/biocides/events_en#anchor0

- (17) In addition, at the request of the Commission, following the first, similar application for derogation for products consisting of *in situ* generated nitrogen from Austria, the European Chemicals Agency conducted a public consultation on that application, allowing all interested parties to provide their views. The vast majority of the 1 487 comments received were in favour of the derogation. Many contributors outlined the disadvantages of the alternative techniques available: thermal treatments may damage certain materials; the use of other active substances leaves toxic residues on artefacts that are progressively released to the environment; the use of nitrogen in cylinders does not allow the control of the relative humidity in the treatment area, which is needed for the treatment of some materials.
- (18) Two international organisations representing museums and cultural heritage sites – International Council of Museums and International Council on Monuments and Sites – have expressed their intention to submit an application for inclusion of *in situ* generated nitrogen in Annex I to Regulation (EU) No 528/2012, which would allow Member States to authorise products consisting of *in situ* generated nitrogen without the need for a derogation in accordance with Article 55(3) of that Regulation. However, performing the evaluation of such an application, including the substance into Annex I to Regulation (EU) No 528/2012 and obtaining product authorisations require time.
- (19) The application shows that no appropriate alternatives are available in Portugal, since all the alternative techniques currently available present disadvantages either due to non-suitability for the treatment of all materials or practical disadvantages.
- (20) Based on all those arguments it is appropriate to conclude that *in situ* generated nitrogen is essential for the protection of cultural heritage in Portugal and that no appropriate alternatives are available. Portugal should therefore be allowed to authorise the making available on the market and use of biocidal products consisting of *in situ* generated nitrogen for the protection of cultural heritage.
- (21) The possible inclusion of *in situ* generated nitrogen into Annex I to Regulation (EU) No 528/2012 and the subsequent authorisation by Member States of products consisting of *in situ* generated nitrogen requires time. It is therefore appropriate to allow a derogation for a period that would allow the completion of the underlying procedures,

HAS ADOPTED THIS DECISION:

Article 1

Portugal may authorise the making available on the market and use of biocidal products consisting of *in situ* generated nitrogen for the protection of cultural heritage until 31 December 2024.

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 15 July 2020.

For the Commission
Stella KYRIAKIDES
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2020/1048**of 15 July 2020****allowing Austria to authorise biocidal products consisting of *in situ* generated nitrogen for the protection of cultural heritage***(notified under document number C(2020) 4724)***(Only the German text is authentic)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ⁽¹⁾, and in particular Article 55(3) thereof,

After consulting the Standing Committee for Biocidal Products,

Whereas:

- (1) Annex I to Regulation (EU) No 528/2012 contains active substances which have a more favourable environmental or human or animal health profile. Products containing these active substances may therefore be authorised under a simplified procedure. Nitrogen is included in Annex I to Regulation (EU) No 528/2012 subject to the restriction that it is used in limited quantities in ready-for-use canisters.
- (2) Pursuant to Article 86 of Regulation (EU) No 528/2012, nitrogen is approved as active substance for use in biocidal products of product-type 18, insecticides ⁽²⁾. Biocidal products consisting of nitrogen as approved are authorised in several Member States including Austria and are supplied in gas cylinders ⁽³⁾.
- (3) Nitrogen can also be generated *in situ* from ambient air. *In situ* generated nitrogen is currently not approved for use in the Union and it is neither listed in Annex I to Regulation (EU) No 528/2012, nor inserted in the list of active substances included in the review programme of existing active substances in biocidal products in Annex II to Commission Delegated Regulation (EU) No 1062/2014 ⁽⁴⁾.
- (4) Pursuant to Article 55(3) of Regulation (EU) No 528/2012, on 26 June 2019 Austria submitted to the Commission an application for derogation from Article 19(1)(a) of that Regulation asking to allow it to authorise biocidal products consisting of nitrogen generated *in situ* from ambient air for the protection of cultural heritage ('the application'). Further information on the use of *in situ* generated nitrogen by museums and the absence of appropriate alternatives was provided by Austria in a letter of 3 September 2019.
- (5) Cultural heritage can be damaged by a wide range of harmful organisms, from insects to microorganisms. The presence of those organisms not only can lead to the loss of the cultural good itself, but also poses the risk of those harmful organisms being spread to other objects nearby. Without an appropriate treatment, objects could be irretrievably damaged, putting the cultural heritage at serious risk.
- (6) *In situ* generated nitrogen is used to create a controlled atmosphere with a very low concentration of oxygen (anoxia) in permanent or temporary sealed treatment tents or chambers for the control of harmful organisms on cultural heritage objects. Nitrogen is separated from the ambient air and is pumped into the treatment tent or chamber, where the nitrogen content of the atmosphere is increased to 99 % approximately and consequently oxygen is almost completely depleted. The humidity of the nitrogen pumped into the treatment area is set according to the demands of the object to be treated. Harmful organisms cannot survive under the conditions created in the treatment tent or chamber.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ Commission Directive 2009/89/EC of 30 July 2009 amending Directive 98/8/EC of the European Parliament and of the Council to include nitrogen as an active substance in Annex I thereto (OJ L 199, 31.7.2009, p. 19).

⁽³⁾ List of authorised products available at <https://echa.europa.eu/fr/information-on-chemicals/biocidal-products>

⁽⁴⁾ Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 294, 10.10.2014, p. 1).

- (7) According to the information submitted by Austria, the use of *in situ* generated nitrogen appears to be the only effective technique for the control of harmful organisms that can be used for all types of materials and combinations of materials present in museum collections and exhibitions and cultural heritage sites without damaging them and is effective against all known harmful organisms to cultural heritage objects at all stages of development.
- (8) The method of anoxia or modified or controlled atmosphere is listed in the standard EN 16790:2016 'Conservation of cultural heritage – Integrated pest management (IPM) for protection of cultural heritage' and nitrogen is described in this standard as 'most used' for creating anoxia.
- (9) Other techniques for the control of harmful organisms are available, such as low temperature treatment, heat treatment, humidity controlled warm air treatment. In addition, other biocidal active substances can be used. However, according to Austria, each of these techniques has limitations in terms of damage that could occur to certain materials during treatment and, therefore, none of them can be used alone for the treatment of all types of materials and combinations of materials.
- (10) According to the information submitted by Austria, thermal processes, i.e. freezing or heat treatments, are not suitable for the treatment of a variety of objects, among which paintings, wax-, oil- or protein-bound polychrome objects, glued objects, leather or vellum objects, photo materials, new untreated wooden objects, newly restored objects, objects under tension. In addition, due to the different thermal conductivity and thermal expansion of different materials, mechanical stress caused by dilation can endanger fragile objects made of mixed materials.
- (11) The application demonstrates that the use of biocidal products containing other active substances available on the market in Austria can modify the objects in a chemical way and may damage the objects, depending on the sensitivity of materials.
- (12) At the same time, in the context of an IPM for protection of cultural heritage, museums intend to move away from the use of more hazardous active substances.
- (13) According to the information in the application, the use of nitrogen contained in cylinders is not an appropriate alternative for museums and cultural heritage sites as it presents practical disadvantages. The limited quantities in cylinders require frequent transport and a separate storage facility. Moreover, according to the information in the application, the point of load of the floors in some historical museum buildings might be exceeded due to the weight of the required number of cylinders.
- (14) Requesting museums and cultural heritage sites to use several techniques to control harmful organisms – each of them suitable for specific materials and objects – instead of using one technique already used and suitable to all materials, would involve additional costs for museums and cultural heritage sites and makes it more complicated for those users to reach the objective of moving away from the use of more hazardous active substances in their IPM.
- (15) Discussions related to a possible derogation pursuant to Article 55(3) of Regulation (EU) No 528/2012 for *in situ* generated nitrogen took place in several meetings ⁽ⁱ⁾ of the Commission expert group of Competent Authorities for Biocidal Products in 2019.
- (16) In addition, on request of the Commission, the European Chemicals Agency conducted a public consultation on the application, allowing all interested parties to provide their views. The vast majority of the 1487 comments received were in favour of the derogation. Many contributors outlined the disadvantages of the alternative techniques available: thermal treatments may damage certain materials; the use of other active substances leave toxic residues on artefacts that are progressively released to the environment; the use of nitrogen in cylinders does not allow the control of the relative humidity in the treatment area, which is needed for the treatment of some materials.
- (17) Two international organisations representing museums and cultural heritage sites – International Council of Museums and International Council on Monuments and Sites – have expressed their intention to submit an application for inclusion of *in situ* generated nitrogen in Annex I to Regulation (EU) No 528/2012, which would allow Member States to authorise products consisting of *in situ* generated nitrogen without the need for a derogation in accordance with Article 55(3) of that Regulation. However, performing the evaluation of such an application, including the substance into Annex I and obtaining product authorisations require time.

⁽ⁱ⁾ 83rd, 84th, 85th and 86th meeting of the Commission Expert Group of representatives of Member States Competent Authorities for the implementation of Regulation (EU) No 528/2012, held in May 2019, July 2019, September 2019 and November 2019, respectively. The minutes of the meetings are available at https://ec.europa.eu/health/biocides/events_en#anchor0

- (18) The application and further information submitted by Austria show that currently no appropriate alternatives are available in Austria, since all the alternative techniques currently available present disadvantages either in terms of non-suitability for the treatment of all materials or practical disadvantages.
- (19) Based on all those arguments it is appropriate to conclude that *in situ* generated nitrogen is essential for the protection of cultural heritage in Austria and that no appropriate alternatives are available. Austria should therefore be allowed to authorise the making available on the market and use of biocidal products consisting of *in situ* generated nitrogen for the protection of cultural heritage.
- (20) The possible inclusion of *in situ* generated nitrogen into Annex I to Regulation (EU) No 528/2012 and the subsequent authorisation by Member States of products consisting of *in situ* generated nitrogen requires time. It is therefore appropriate to allow a derogation for a time period that would allow the completion of the underlying procedures,

HAS ADOPTED THIS DECISION:

Article 1

Austria may authorise the making available on the market and use of biocidal products consisting of in-situ generated nitrogen for the protection of cultural heritage until 31 December 2024.

Article 2

This Decision is addressed to Austria.

Done at Brussels, 15 July 2020.

For the Commission
Stella KYRIAKIDES
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2020/1049**of 15 July 2020****allowing France to authorise biocidal products consisting of in-situ generated nitrogen for the protection of cultural heritage***(notified under document C(2020) 4715)***(Only the French text is authentic)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ⁽¹⁾, and in particular Article 55(3) thereof,

After consulting the Standing Committee for Biocidal Products,

Whereas:

- (1) Annex I to Regulation (EU) No 528/2012 contains active substances which have a more favourable environmental or human or animal health profile than more hazardous chemicals. Products containing these active substances may therefore be authorised under a simplified procedure. Nitrogen is included in Annex I to Regulation (EU) No 528/2012, subject to the restriction that it is used in limited quantities in ready-for-use canisters.
- (2) Pursuant to Article 86 of Regulation (EU) No 528/2012, nitrogen is also approved as active substance for use in biocidal products of product-type 18, insecticides ⁽²⁾. Biocidal products consisting of nitrogen as approved are authorised in several Member States including France and are supplied in gas cylinders ⁽³⁾.
- (3) Nitrogen can also be generated in-situ from ambient air. In-situ generated nitrogen is currently not approved for use in the Union and it is neither listed in Annex I to Regulation (EU) No 528/2012, nor inserted in the list of active substances included in the review programme of existing active substances in biocidal products in Annex II to Commission Delegated Regulation (EU) No 1062/2014 ⁽⁴⁾.
- (4) Pursuant to Article 55(3) of Regulation (EU) No 528/2012, on 14 January 2020 France submitted to the Commission an application for derogation from Article 19(1)(a) of that Regulation asking to allow it to authorise biocidal products consisting of nitrogen generated in-situ from ambient air for the protection of cultural heritage ('the application').
- (5) Cultural heritage can be damaged by a wide range of harmful organisms, from insects to microorganisms. The presence of these organisms not only can lead to the loss of the cultural good itself, but also poses the risk of those harmful organisms being spread to other objects nearby. Without an appropriate treatment, objects could be irretrievably damaged, putting the cultural heritage at serious risk.
- (6) In-situ generated nitrogen is used to create a controlled atmosphere with a very low concentration of oxygen (anoxia) in permanent or temporary sealed treatment tents or chambers for the control of harmful organisms on cultural heritage objects. Nitrogen is separated from the ambient air and is pumped into the treatment tent or chamber, where the nitrogen content of the atmosphere is increased to 99 % approximately and consequently oxygen is almost completely depleted. The humidity of the nitrogen pumped into the treatment area is set according to the demands of the object to be treated. Harmful organisms cannot survive under the conditions created in the treatment tent or chamber.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ Commission Directive 2009/89/EC of 30 July 2009 amending Directive 98/8/EC of the European Parliament and of the Council to include nitrogen as an active substance in Annex I thereto (OJ L 199, 31.7.2009, p. 19).

⁽³⁾ List of authorised products available at <https://echa.europa.eu/fr/information-on-chemicals/biocidal-products>

⁽⁴⁾ Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 294, 10.10.2014, p. 1).

- (7) According to the information submitted by France, the use of in-situ generated nitrogen appears to be the only effective technique for the control of harmful organisms that can be used for all types of materials and combinations of materials present in museum collections and exhibitions and cultural heritage sites without damaging them at a reasonable cost.
- (8) The method of anoxia or modified or controlled atmosphere is listed in the standard EN 16790:2016 'Conservation of cultural heritage – Integrated pest management (IPM) for protection of cultural heritage' and nitrogen is described in this standard as 'most used' for creating anoxia.
- (9) Other techniques for the control of harmful organisms are available, such as low temperature treatment, heat treatment, gamma radiation. In addition, other active substances can be used. However, according to France, each of these techniques has limitations in terms of damage that could occur to certain materials during treatment and, therefore, none of them can be used alone for the treatment of all types of materials and combinations of materials.
- (10) According to the information submitted by France, as regards the technique of cold disinfestation there are doubts as to its suitability for all collections of fine arts and decorative arts. In the case of works in laminated materials (painted, varnished or waxed works, inlaid works or works with incrustation threads) this technique may pose a risk of damaging those objects. However, with respect to the preservation of cultural heritage included in the national inventory, such doubts are not allowed, in accordance with the national conservation policies applicable to institutions holding public collections.
- (11) As stated in the application, disinfestation by raising the temperature is not widely used by cultural heritage institutions. As in the case of cold disinfestation, there are concerns about the impact of heat treatment on stratified materials. Moreover, with heat treatment there are additional risks of loss of adhesion for adhesives, softening of the wax-containing elements and resurfacing of previously used chemicals, which generates spots on the surface of the objects.
- (12) According to the information in the application, the technique of gamma radiation requires specific equipment meeting specific safety requirements for the implementation of the technique and require advanced skills. It is thus a costly and difficult to replicate technique. Moreover, this technique is not suitable for transparent or translucent materials, which tend to become opaque or to stain in response to gamma radiation.
- (13) The application demonstrates that the use of biocidal products containing other active substances available on the market in France leaves residues on the works treated, that can be released into the environment and can pose a risk to human health. Moreover, these substances have significant disadvantages in terms of physical conservation of cultural works since many of them can induce changes in colour, oily or tacky exudations, surface crystallisations or alterations of the DNA of materials of animal origin.
- (14) In recent decades, in the context of an IPM for protection of cultural heritage, a growing number of cultural heritage institutions sought solutions to move away from the use of potentially hazardous chemicals and turned to techniques – such as anoxia – which are gentler to cultural heritage collections and less detrimental to the persons working with them.
- (15) According to the information in the application, the use of nitrogen contained in cylinders is not an appropriate alternative for museums and cultural heritage sites, as it presents practical and economic disadvantages. The limited quantities in cylinders require frequent transport and a separate storage facility. The storage of a large number of cylinders poses security risks due to the presence of gas under pressure. The anoxia using in-situ generated nitrogen results in lower costs for cultural heritage institutions compared to the use of nitrogen in cylinders. Beyond the initial investment in treatment chamber and in-situ nitrogen generator it does not generate any other costs.
- (16) Requesting museums and cultural heritage sites to use several techniques to control harmful organisms – each of them suitable for specific materials and objects – instead of using one technique already used and suitable to all materials, would involve additional costs for museums and cultural heritage sites and make it more complicated for them to reach the objective of moving away from the use of more hazardous active substances in their IPM.

- (17) Discussions related to a possible derogation pursuant to Article 55(3) for in-situ generated nitrogen took place in several meetings ⁽ⁱ⁾ of the Commission expert group of Competent Authorities for Biocidal Products in 2019.
- (18) In addition, at the request of the Commission, following the first, similar application for derogation for products consisting of in-situ generated nitrogen from Austria, the European Chemicals Agency conducted a public consultation on that application, allowing all interested parties to provide their views. The vast majority of the 1 487 comments received were in favour of the derogation. Many contributors outlined the disadvantages of the alternative techniques available: thermal treatments may damage certain materials; the use of other active substances leaves toxic residues on artefacts that are progressively released to the environment; the use of nitrogen in cylinders does not allow the control of the relative humidity in the treatment area, which is needed for the treatment of some materials.
- (19) Two international organisations representing museums and cultural heritage sites – International Council of Museums and International Council on Monuments and Sites – have expressed their intention to submit an application for inclusion of in-situ generated nitrogen in Annex I to Regulation (EU) No 528/2012, which would allow Member States to authorise products consisting of in-situ generated nitrogen without the need for a derogation in accordance with Article 55(3) of that Regulation. However, performing the evaluation of such an application, including the substance into Annex I to Regulation (EU) No 528/2012 and obtaining product authorisations require time.
- (20) The application shows that no appropriate alternatives are available in France, since all the alternative techniques currently available present disadvantages either due to non-suitability for the treatment of all materials or practical disadvantages.
- (21) Based on all those arguments it is appropriate to conclude that in-situ generated nitrogen is essential for the protection of cultural heritage in France and that no appropriate alternatives are available. France should therefore be allowed to authorise the making available on the market and use of biocidal products consisting of in-situ generated nitrogen for the protection of cultural heritage.
- (22) The possible inclusion of in-situ generated nitrogen into Annex I to Regulation (EU) No 528/2012 and the subsequent authorisation by Member States of products consisting of in-situ generated nitrogen requires time. It is therefore appropriate to allow a derogation for a period that would allow the completion of the underlying procedures,

HAS ADOPTED THIS DECISION:

Article 1

France may authorise the making available on the market and use of biocidal products consisting of in-situ generated nitrogen for the protection of cultural heritage until 31 December 2024.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 15 July 2020.

For the Commission
Stella KYRIAKIDES
Member of the Commission

⁽ⁱ⁾ 83rd, 84th, 85th and 86th meeting of representatives of Member States Competent Authorities for the implementation of Regulation (EU) No 528/2012, held in May 2019, July 2019, September 2019 and November 2019, respectively. The minutes of the meetings are available at https://ec.europa.eu/health/biocides/events_en#anchor0

COMMISSION IMPLEMENTING DECISION (EU) 2020/1050**of 15 July 2020****allowing Spain to authorise biocidal products consisting of in-situ generated nitrogen for the protection of cultural heritage****(Only the Spanish text is authentic)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ⁽¹⁾, and in particular Article 55(3) thereof,

After consulting the Standing Committee for Biocidal Products,

Whereas:

- (1) Annex I to Regulation (EU) No 528/2012 contains active substances which have a more favourable environmental or human or animal health profile. Products containing these active substances may therefore be authorised under a simplified procedure. Nitrogen is included in Annex I to Regulation (EU) No 528/2012, subject to the restriction that it is used in limited quantities in ready-for-use canisters.
- (2) Pursuant to Article 86 of Regulation (EU) No 528/2012, nitrogen is approved as active substance for use in biocidal products of product-type 18, insecticides ⁽²⁾. Biocidal products consisting of nitrogen as approved are authorised in several Member States including Spain and are supplied in gas cylinders ⁽³⁾.
- (3) Nitrogen can also be generated in-situ from ambient air. In-situ generated nitrogen is currently not approved for use in the Union and it is neither listed in Annex I to Regulation (EU) No 528/2012, nor inserted in the list of active substances included in the review programme of existing active substances in biocidal products in Annex II to Commission Delegated Regulation (EU) No 1062/2014 ⁽⁴⁾.
- (4) Pursuant to Article 55(3) of Regulation (EU) No 528/2012, on 19 November 2019 Spain submitted to the Commission an application for derogation from Article 19(1)(a) of that Regulation asking to allow it to authorise biocidal products consisting of nitrogen generated in-situ from ambient air for the protection of cultural heritage ('the application').
- (5) Cultural heritage can be damaged by a wide range of harmful organisms, from insects to microorganisms. The presence of those organisms not only can lead to the loss of the cultural good itself, but also poses the risk of those harmful organisms being spread to other objects nearby. Without an appropriate treatment, objects could be irretrievably damaged, putting the cultural heritage at serious risk.
- (6) In-situ generated nitrogen is used to create a controlled atmosphere with a very low concentration of oxygen (anoxia) in permanent or temporary sealed treatment tents or chambers for the control of harmful organisms on cultural heritage objects. Nitrogen is separated from the ambient air and is pumped into the treatment tent or chamber, where the nitrogen content of the atmosphere is increased to 99 % approximately and consequently oxygen is almost completely depleted. The humidity of the nitrogen pumped into the treatment area is set according to the demands of the object to be treated. Harmful organisms cannot survive under the conditions created in the treatment tent or chamber.
- (7) As stated in the application, the development in the past decades of the technique of nitrogen-based anoxia for the treatment of cultural heritage objects allowed cultural institutions (museums, archives, libraries, conservation-restoration centres, etc.) to move away from the use of highly toxic substances used previously.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ Commission Directive 2009/89/EC of 30 July 2009 amending Directive 98/8/EC of the European Parliament and of the Council to include nitrogen as an active substance in Annex I thereto (OJ L 199, 31.7.2009, p. 19).

⁽³⁾ List of authorised products available at <https://echa.europa.eu/fr/information-on-chemicals/biocidal-products>

⁽⁴⁾ Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 294, 10.10.2014, p. 1).

- (8) According to the information submitted by Spain, the use of in-situ generated nitrogen appears to be the only effective technique for the control of harmful organisms that can be used for all types of materials and combinations of materials present in cultural institutions without altering the macroscopic and molecular features of the objects. This technique can be applied for the treatment of especially sensitive materials, such as ethnographic heritage, mummies, contemporary art, for their conservation.
- (9) The method of anoxia or modified or controlled atmosphere is listed in the standard EN 16790:2016 'Conservation of cultural heritage – Integrated pest management (IPM) for protection of cultural heritage' and nitrogen is described in this standard as 'most used' for creating anoxia.
- (10) Other techniques for the control of harmful organisms are available, such as gamma radiation, thermal shock techniques (high or low temperatures), microwaves. In addition, other active substances can be used for that purpose. However, according to Spain, each of these techniques has limitations in terms of materials on which they can be applied.
- (11) As stated in the application, other active substances are barely used in cultural institutions due to their hazard profile. After treatment with these substances, the residues on the treated objects can be progressively released to the environment, which poses a risk to human health. This is particularly relevant for the cultural institutions that are open for visitors.
- (12) According to the application, the use of gamma radiation could generate DNA alterations in objects such as mummies or objects in natural history museums, whereas their further study and analysis require preserving their genetic material intact. Moreover, the use of gamma radiation would require the creation of special radioactive facilities, equipping the space in a specific way in order to meet safety requirements and training and monitoring of staff exposed to ionising radiations. Such arrangements are hardly feasible in cultural institutions.
- (13) According to the information in the application, thermal shock processes (freezing or heat treatments) have undesired effects on several materials. High temperature treatments can cause modifications on the surface of organic materials, softening of glues and lipid crystallisation. According to Spain, high-temperature based treatments are barely applied in the cultural heritage conservation field, since many of the materials found in movable cultural heritage have a lipid or protein nature (e.g. oil paintings, tempera, wax sculptures). Moreover, a temperature increase might trigger undesired chemical reactions. Similarly, low temperature treatments could affect the surface treatments and coverings as well as generate condensation inside the treatment spaces.
- (14) As stated in the application, microwave treatments may generate heat, causing microscopic and macroscopic alterations in cultural objects.
- (15) According to the information in the application, the use of nitrogen in cylinders is not an appropriate alternative for cultural institutions, as it presents practical disadvantages. The limited quantities in cylinders require frequent transport and a separate storage facility. The treatment with nitrogen in cylinders would also generate high costs for the cultural institutions.
- (16) As stated in the application, during the last decades many cultural institutions invested in the construction of treatment chambers and the purchase of nitrogen generators. Due to its versatility and suitability for the treatment of all materials, in-situ generated nitrogen anoxia is very widely used in the conservation of cultural heritage.
- (17) Requesting cultural institutions to use several techniques to control harmful organisms – each of them suitable for specific materials and objects – instead of using one technique already used and suitable to all materials, would involve additional costs for cultural institutions and make it more complicated for them to reach the objective of moving away from the use of more hazardous active substances in their IPM. In addition, the abandonment of facilities and equipment acquired for in-situ generated nitrogen anoxia would represent a loss of previous investments.
- (18) Discussions related to a possible derogation pursuant to Article 55(3) of Regulation (EU) No 528/2012 for in-situ generated nitrogen took place in several meetings ^(*) of the Commission expert group of Competent Authorities for Biocidal Products in 2019.

^(*) 83rd, 84th, 85th and 86th meeting of the Commission Expert Group of representatives of Member States Competent Authorities for the implementation of Regulation (EU) No 528/2012, held in May 2019, July 2019, September 2019 and November 2019, respectively. The minutes of the meetings are available at https://ec.europa.eu/health/biocides/events_en#anchor0

- (19) In addition, on Commission's request, following the first, similar application for derogation for products consisting of in-situ generated nitrogen from Austria, the European Chemicals Agency conducted a public consultation on that application, allowing all interested parties to provide their views. The vast majority of the 1 487 comments received were in favour of the derogation. Many contributors outlined the disadvantages of the alternative techniques available: thermal treatments may damage certain materials; the use of other active substances leaves toxic residues on artefacts that are progressively released to the environment; the use of nitrogen in cylinders does not allow the control of the relative humidity in the treatment area, which is needed for the treatment of some materials.
- (20) Two international organisations representing museums and cultural heritage sites – International Council of Museums and International Council on Monuments and Sites – have expressed their intention to submit an application for inclusion of in-situ generated nitrogen in Annex I to Regulation (EU) No 528/2012, which would allow Member States to authorise products consisting of in-situ generated nitrogen without the need for a derogation in accordance with Article 55(3) of that Regulation. However, performing the evaluation of such an application, including the substance into Annex I to Regulation (EU) No 528/2012 and obtaining product authorisations require time.
- (21) The application shows that no appropriate alternatives are available in Spain, since all the alternative techniques currently available present disadvantages either due to non-suitability for the treatment of all materials or practical disadvantages.
- (22) Based on all those arguments it is appropriate to conclude that in-situ generated nitrogen is essential for the protection of cultural heritage in Spain and that no appropriate alternatives are available. Spain should therefore be allowed to authorise the making available on the market and use of biocidal products consisting of in-situ generated nitrogen for the protection of cultural heritage.
- (23) The possible inclusion of in-situ generated nitrogen into Annex I to Regulation (EU) No 528/2012 and the subsequent authorisation by Member States of products consisting of in-situ generated nitrogen requires time. It is therefore appropriate to allow a derogation for a period that would allow the completion of the underlying procedures,

HAS ADOPTED THIS DECISION:

Article 1

Spain may authorise the making available on the market and use of biocidal products consisting of in-situ generated nitrogen for the protection of cultural heritage until 31 December 2024.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 15 July 2020.

For the Commission
Stella KYRIAKIDES
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2020/1051**of 16 July 2020****terminating the absorption reinvestigation concerning imports of certain cast iron articles originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ (the 'basic Regulation'), and in particular Articles 9(1) and 12 thereof,

Whereas:

1. PROCEDURE

- (1) On 18 December 2019, the Commission announced the reopening of the anti-dumping investigation concerning imports of certain cast iron articles originating in the People's Republic of China by publishing a Notice of Reopening in the *Official Journal of the European Union* ⁽²⁾ (the 'Notice of Reopening').
- (2) The Commission reopened the investigation following a request lodged by eight Union producers (the 'Applicants') representing more than 25 % of the total Union production of certain cast iron articles. The request contained evidence showing that, after the original investigation period and following the imposition of the provisional anti-dumping duties, Chinese export prices of certain cast iron articles had decreased and that there had been insufficient movement in the resale prices on the Union market. That evidence was considered sufficient to justify reopening the investigation.
- (3) In the Notice of Reopening, the Commission invited interested parties to contact it in order to participate in the reinvestigation. In addition, the Commission specifically informed the Applicants, the known exporting producers, the known importers and the authorities of the People's Republic of China about the absorption reinvestigation and invited them to participate.

2. WITHDRAWAL OF THE COMPLAINT AND TERMINATION OF THE PROCEEDING

- (4) By letter of 15 May 2020, the Applicants informed the Commission that they withdrew their request.
- (5) Under Article 9(1) of the basic Regulation, proceedings may be terminated where the request is withdrawn, unless such termination would not be in the Union interest.
- (6) The absorption reinvestigation had not brought to light any considerations demonstrating that a termination of the absorption reinvestigation would not be in the Union interest.
- (7) The Commission therefore concluded that the absorption reinvestigation concerning imports into the Union of certain cast iron articles originating in the People's Republic of China should be terminated without amending the measures in force.
- (8) Interested parties were informed accordingly and were given an opportunity to comment. However, no comments were received from interested parties that would lead to the conclusion that a termination of the absorption reinvestigation would not be in the Union interest.
- (9) This Decision is in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Notice of reopening the anti-dumping investigation concerning imports of certain cast iron articles originating in the People's Republic of China (OJ C 425, 18.12.2019, p. 9).

HAS ADOPTED THIS DECISION:

Article 1

The absorption reinvestigation concerning imports of certain cast iron articles, currently falling under CN codes ex 7325 10 00 (TARIC code 7325 10 00 31) and ex 7325 99 90 (TARIC code 7325 99 90 80), originating in the People's Republic of China, is hereby terminated.

Article 2

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

Done at Brussels, 16 July 2020.

For the Commission

The President

Ursula VON DER LEYEN

RECOMMENDATIONS

COUNCIL RECOMMENDATION (EU) 2020/1052

of 16 July 2020

amending Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(b) and (e) and Article 292, first and second sentence thereof,

Whereas:

- (1) On 30 June 2020, the Council adopted a Recommendation on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction ⁽¹⁾ ('Council Recommendation').
- (2) The Council Recommendation provides that Member States should gradually lift the temporary restriction on non-essential travel to the EU as from 1 July 2020 in a coordinated manner with regard to the residents of the third countries listed in Annex I to the Council Recommendation. Every two weeks, the list of third countries referred to in Annex I should be reviewed, and as the case may be updated, by the Council, after close consultation with the Commission and the relevant EU agencies and services following an overall assessment based on the methodology, criteria and information referred to in the Council Recommendation.
- (3) Discussions have since then taken place within the Council, in close consultation with the Commission and the relevant EU agencies and services, on the review of the list of third countries set out in Annex I to the Council Recommendation and in application of the criteria and methodology laid down in the Council Recommendation. As a result of these discussions, the list of third countries set out in Annex I should be amended. In particular, Serbia and Montenegro should be deleted from the list.
- (4) Border control is in the interest not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control. Member States should therefore ensure that measures taken at the external borders are coordinated in order to ensure a well functioning Schengen area. To that end, as of 16 July 2020, Member States should continue lifting the temporary restriction on non-essential travel into the EU in a coordinated manner with regard to the residents of the third countries listed in Annex I of the Council Recommendation as amended by this Recommendation.
- (5) In accordance with Articles 1 and 2 of Protocol No 22 on the Position of Denmark annexed to the Treaty on European Union and to the TFEU, Denmark is not taking part in the adoption of this Recommendation and is not bound by it or subject to its application. Given that this Recommendation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of the said Protocol, decide within a period of six months after the Council has decided on this Recommendation whether it will implement it.
- (6) This Recommendation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ⁽²⁾; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (7) As regards Iceland and Norway, this Recommendation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC ⁽³⁾.

⁽¹⁾ OJ L 208 I, 1.7.2020, p. 1.

⁽²⁾ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

⁽³⁾ OJ L 176, 10.7.1999, p. 36.

- (8) As regards Switzerland, this Recommendation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC ⁽⁴⁾ read in conjunction with Article 3 of Council Decision 2008/146/EC ⁽⁵⁾.
- (9) As regards Liechtenstein, this Recommendation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1 point A, of Decision 1999/437/EC ⁽⁶⁾ read in conjunction with Article 3 of Decision 2011/350/EU ⁽⁷⁾,

HAS ADOPTED THIS RECOMMENDATION:

Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction is amended as follows:

- (1) the first paragraph of point 1 of the Council Recommendation is replaced by the following:

'1. As from 16 July 2020, Member States should gradually lift the temporary restriction on non-essential travel to the EU in a coordinated manner with regard to the residents of the third countries listed in Annex I.;

- (2) Annex I to the Recommendation is replaced by the following:

'ANNEX I

Third countries whose residents should not be affected by temporary external borders restriction on non-essential travel into the EU

1. ALGERIA
2. AUSTRALIA
3. CANADA
4. GEORGIA
5. JAPAN
6. MOROCCO
7. NEW ZEALAND
8. RWANDA
9. SOUTH KOREA
10. THAILAND

⁽⁴⁾ OJ L 53, 27.2.2008, p. 52.

⁽⁵⁾ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

⁽⁶⁾ OJ L 160, 18.6.2011, p. 21.

⁽⁷⁾ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

11. TUNISIA
12. URUGUAY
13. CHINA (*)

(*) subject to confirmation of reciprocity'

Done at Brussels, 16 July 2020.

For the Council
The President
M. ROTH

RULES OF PROCEDURE

DECISION OF THE GOVERNING BOARD OF THE FUEL CELLS AND HYDROGEN 2 JOINT UNDERTAKING

of 26 May 2020

laying down internal rules concerning restrictions of certain rights of data subjects in relation to processing of personal data in the framework of the functioning of the FCH 2 JU

THE GOVERNING BOARD OF THE FUEL CELLS AND HYDROGEN 2 JOINT UNDERTAKING (hereafter referred to as 'the FCH 2 JU'),

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

Having regard to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ⁽¹⁾, and in particular Article 25 thereof,

Having regard to Council Regulation (EU) No 559/2014 of 6 May 2014 establishing the Fuel Cells and Hydrogen 2 Joint Undertaking ⁽²⁾, and in particular Article 7(3)(r),

Having regard to the European Data Protection Supervisor (EDPS) Guidance on Article 25 of the new Regulation and internal rules,

After having consulted the EDPS, on 12 November 2019, in accordance with Article 41(2) of Regulation (EU) 2018/1725,

Having regard to the recommendations of the European Data Protection Supervisor ('EDPS') of 18 December 2019,

Whereas:

- (1) The FCH 2 JU carries out its activities in accordance with Regulation (EU) No 559/2014.
- (2) In accordance with Article 25(1) of Regulation (EU) 2018/1725, restrictions of the application of Articles 14 to 22, 35 and 36, as well as Article 4 of that Regulation in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 22 should be based on internal rules to be adopted by the JU, where these are not based on legal acts adopted on the basis of the Treaties.
- (3) These internal rules, including its provisions on the assessment of the necessity and proportionality of a restriction, should not apply where a legal act adopted on the basis of the Treaties provides for a restriction of data subject rights.
- (4) Where the FCH 2 JU performs its duties with respect to data subject's rights under Regulation (EU) 2018/1725, it shall consider whether any of the exemptions laid down in that Regulation apply.
- (5) Within the framework of its administrative functioning, the FCH 2 JU may conduct administrative inquiries, disciplinary proceedings, carry out preliminary activities related to cases of potential irregularities reported to OLAF, process whistleblowing cases, process (formal and informal) procedures of harassment, process internal and external complaints, conduct internal audits, carry out investigations by the Data Protection Officer in line with Article 45(2) of Regulation (EU) 2018/1725 and internal (IT) security investigations.

⁽¹⁾ OJ L 295, 21.11.2018, p. 39.

⁽²⁾ OJ L 169, 7.6.2014, p. 108.

- (6) The FCH 2 JU processes several categories of personal data, including hard data ('objective' data such as identification data, contact data, professional data, administrative details, data received from specific sources, electronic communications and traffic data) and soft data ('subjective' data related to the case such as reasoning, behavioural data, appraisals, performance and conduct data and data related to or brought forward in connection with the subject matter of the procedure or activity) ⁽⁷⁾.
- (7) The FCH 2 JU, represented by its Executive Director, acts as the data controller irrespective of further delegations of the controller role within the FCH 2 JU to reflect operational responsibilities for specific personal data processing operations.
- (8) The personal data are stored securely in an electronic environment or on paper preventing unlawful access or transfer of data to persons who do not have a need to know. The personal data processed are retained for no longer than necessary and appropriate for the purposes for which the data are processed for the period specified in the data protection notices, privacy statements or records of the FCH 2 JU.
- (9) The internal rules should apply to all processing operations carried out by the FCH 2 JU in the performance of administrative inquiries, disciplinary proceedings, preliminary activities related to cases of potential irregularities reported to OLAF, whistleblowing procedures, (formal and informal) procedures for cases of harassment, processing internal and external complaints, internal audits, the investigations carried out by the Data Protection Officer in line with Article 45(2) of Regulation (EU) 2018/1725, (IT) security investigations handled internally or with external involvement (e.g. CERT-EU).
- (10) They should apply to processing operations carried out prior to the opening of the procedures referred to above, during these procedures and during the monitoring of the follow-up to the outcome of these procedures. It should also include assistance and cooperation provided by the FCH 2 JU to national authorities and international organisations outside of its administrative investigations.
- (11) In cases where these internal rules apply, the FCH 2 JU must provide justifications explaining why the restrictions are strictly necessary and proportionate in a democratic society and respect the essence of the fundamental rights and freedoms.
- (12) Within this framework the FCH 2 JU is bound to respect, to the maximum extent possible, the fundamental rights of the data subjects during the above procedures, in particular, those relating to the right of provision of information, access and rectification, right to erasure, restriction of processing, right of communication of a personal data breach to the data subject or confidentiality of communication as enshrined in Regulation (EU) 2018/1725.
- (13) However, the FCH 2 JU may be obliged to restrict the information to data subject and other data subject's rights to protect, in particular, its own investigations, the investigations and proceedings of other public authorities, as well as the rights of other persons related to its investigations or other procedures.
- (14) The FCH 2 JU may thus restrict the information for the purposes of protecting the investigation, and the fundamental rights and freedoms of other data subjects.
- (15) The FCH 2 JU should periodically monitor that the conditions justifying the restriction apply, and lift the restriction as far as they no longer apply.
- (16) The Controller should inform the Data Protection Officer at the moment of deferral and during the revisions,

⁽⁷⁾ In cases of joint controllership data shall be processed in line with the means and purposes established in the relevant agreement among the joint controllers as defined in Article 28 of Regulation (EU) 2018/1725.

HAS ADOPTED THIS DECISION:

Article 1

Subject matter and scope

1. This Decision lays down rules relating to the conditions under which the FCH 2 JU in the framework of its procedures set out paragraph 2 may restrict the application of the rights enshrined in Articles 14 to 21, 35 and 36, as well as Article 4 thereof, following Article 25 of Regulation (EU) 2018/1725.
2. Within the framework of the administrative functioning of the FCH 2 JU, this Decision applies to the processing operations on personal data by the Programme Office for the purposes of conducting administrative inquiries, disciplinary proceedings, preliminary activities related to cases of potential irregularities reported to OLAF, processing whistleblowing cases, (formal and informal) procedures of harassment, processing internal and external complaints, conducting internal audits, investigations carried out by the Data Protection Officer in line with Article 45(2) of Regulation (EU) 2018/1725 and (IT) security investigations handled internally or with external involvement (e.g. CERT-EU).
3. The categories of data concerned are hard data ('objective' data such as identification data, contact data, professional data, administrative details, data received from specific sources, electronic communications and traffic data) and soft data ('subjective' data related to the case such as reasoning, behavioural data, appraisals, performance and conduct data and data related to or brought forward in connection with the subject matter of the procedure or activity).
4. Where the FCH 2 JU performs its duties with respect to data subject's rights under Regulation (EU) 2018/1725, it shall consider whether any of the exemptions laid down in that Regulation apply.
5. Subject to the conditions set out in this Decision, the restrictions may apply to the following rights: provision of information to data subjects, right of access, rectification, erasure, restriction of processing, communication of a personal data breach to the data subject or confidentiality of communication.

Article 2

Specification of the controller

The controller of the processing operations is the FCH 2 JU, represented by its Executive Director, who may delegate the function of the controller. Data subjects shall be informed of the delegated controller by way of the data protection notices or records published on the website and/or the intranet of the FCH 2 JU.

Article 3

Specification of safeguards

1. The JU shall put in place the following safeguards aimed at preventing abuse or unlawful access or transfer of personal data ⁽⁴⁾:
 - (a) Paper documents shall be kept in secured cupboards and only accessible to authorised staff;
 - (b) All electronic data shall be stored in a secure IT application according to the JU's security standards, as well as in specific electronic folders accessible only to authorised staff. Appropriate levels of access shall be granted individually;
 - (c) The database shall be password-protected under a single sign-on system and connected automatically to the user's ID and password. Replacing users is strictly prohibited. E-records shall be held securely to safeguard the confidentiality and privacy of the data therein;
 - (d) All persons having access to the data are bound by the obligation of confidentiality.

⁽⁴⁾ This list is non-exhaustive.

2. The retention period of the personal data referred to in Article 1(3) shall be no longer than necessary and appropriate for the purposes for which the data are processed. It shall in any event not be longer than the retention period specified in the data protection notices, privacy statements or records referred to in Article 6.

3. Where the FCH 2 JU considers to apply a restriction, the risk to the rights and freedoms of the data subject shall be weighed, in particular, against the risk to the rights and freedoms of other data subjects and the risk of cancelling the effect of the JU's investigations or procedures for example by destroying evidence. The risks to the rights and freedoms of the data subject concern primarily, but are not limited to, reputational risks and risks to the right of defence and the right to be heard.

Article 4

Restrictions

1. Any restriction shall only be applied by the FCH 2 JU to safeguard:

- (a) the national security, public security or defence of the Member States;
- (b) the prevention, investigation, detection and prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security;
- (c) other important objectives of general public interest of the Union or of a Member State, in particular the objectives of the common foreign and security policy of the Union or an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation matters, public health and social security;
- (d) the internal security of Union institutions and bodies, including of their electronic communications networks;
- (e) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
- (f) a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority in the cases referred to in points (a) to (c);
- (g) the protection of the data subject or the rights and freedoms of others;
- (h) the enforcement of civil law claims.

2. As a specific application of the purposes described in paragraph 1 above, the FCH 2 JU may apply restrictions in the following circumstances:

- (a) in relation to personal data exchanged with Commission services or other Union institutions, bodies, agencies and offices:

where such Commission service, Union institution, body or agency, is entitled to restrict the exercise of the listed rights on the basis of other acts provided for in Article 25 of Regulation (EU) 2018/1725 or in accordance with Chapter IX of that Regulation or with the founding acts of other Union institutions, bodies, agencies and offices;

where the purpose of such a restriction by that Commission service, Union institution, body or agency would be jeopardised were the JU not to apply an equivalent restriction in respect of the same personal data.

- (b) in relation to personal data exchanged with competent authorities of Member States:

where such competent authorities of Member States are entitled to restrict the exercise of the listed rights on the basis of acts referred to in Article 23 of Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽⁵⁾, or under national measures transposing Articles 13(3), 15(3) or 16(3) of Directive (EU) 2016/680 of the European Parliament and of the Council ⁽⁶⁾;

⁽⁵⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽⁶⁾ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

where the purpose of such a restriction by that competent authority would be jeopardised were the JU not to apply an equivalent restriction in respect of the same personal data.

- (c) in relation to personal data exchanged with third countries or international organisations, where there is clear evidence that the exercise of those rights and obligations is likely to jeopardise the JU's cooperation with third countries or international organisations in the conduct of its tasks.

Before applying restrictions in the circumstances referred to in points (a) and (b) of the first subparagraph, the FCH 2 JU shall consult the relevant Commission services, Union institutions, bodies, agencies, offices or the competent authorities of Member States unless it is clear to the FCH 2 JU that the application of a restriction is provided for by one of the acts referred to in those points.

Article 5

Restrictions to the rights of data subjects

1. In duly justified cases and under the conditions stipulated in this decision, the following rights may be restricted by the controller in the context of the processing operations listed in paragraph 2 below where necessary and proportionate:

- (a) The right to information;
- (b) The right of access;
- (c) The right of rectification, erasure and restriction of processing;
- (d) The right to communication of a personal data breach to the data subject;
- (e) The right to confidentiality of electronic communications.

2. In accordance with Article 25(2)(a) of Regulation (EU) 2018/1725, in duly justified cases and under the conditions stipulated in this decision, restrictions may be applied by the controller in the context of the following processing operations:

- (a) the performance of administrative inquiries and disciplinary proceedings;
- (b) preliminary activities related to cases of potential irregularities reported to OLAF;
- (c) whistleblowing procedures;
- (d) (formal and informal) procedures for cases of harassment ⁽⁷⁾;
- (e) processing internal and external complaints;
- (f) internal audits;
- (g) the investigations carried out by the Data Protection Officer in line with Article 45(2) of Regulation (EU) 2018/1725;
- (h) (IT) security investigations handled internally or with external involvement (e.g. CERT-EU);
- (i) within the frame of the grant management or procurement procedure, after the closing date of the submission of the calls for proposals or the application of tenders ⁽⁸⁾.

The restriction shall continue to apply as long as the reasons justifying it remain applicable.

3. Where the JU restricts, wholly or partly, the application of the rights in paragraph 1 above, it shall take the steps set out in Articles 6 and 7 of this Decision.

4. Where data subjects request access to their personal data processed in the context of one or more specific cases or to a particular processing operation, in accordance with Article 17 of Regulation (EU) 2018/1725, the FCH 2 JU shall limit its assessment of the request to such personal data only.

⁽⁷⁾ This processing operation shall **not** apply to Article 5(1)(d).

⁽⁸⁾ This processing operation shall **only** apply to Article 5(1)(c).

*Article 6***Necessity and proportionality of restrictions**

1. Any restriction outlined in Article 5 shall be necessary and proportionate taking into account the risks to the rights and freedoms of data subjects and respect the essence of the fundamental rights and freedoms in a democratic society.
2. If the application of restriction is considered, a necessity and proportionality test shall be carried out based on the present rules. The test shall also be conducted within the framework of the periodic review, following assessment of whether the factual and legal reasons for a restriction still apply. It shall be documented through an internal assessment note for accountability purposes on a case by case basis.
3. Restrictions shall be temporary and lifted as soon as the circumstances that justify them no longer apply. In particular, where it is considered that the exercise of the restricted right would no longer cancel the effect of the restriction imposed or adversely affect the rights or freedoms of other data subjects.

The JU shall review the application of the restriction every six months from its adoption and at the closure of the relevant inquiry, procedure or investigation. Thereafter, the controller shall monitor the need to maintain any restriction every six months.

4. Where the FCH 2 JU applies, wholly or partly, the restrictions outlined in Article 5 of this Decision, it shall record the reasons for the restriction, the legal ground in accordance with paragraph 1 above, including an assessment of the necessity and proportionality of the restriction.

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

*Article 7***Obligation to inform**

1. The FCH 2 JU shall include in the data protection notices, privacy statements or records in the sense of Article 31 of Regulation (EU) 2018/1725, published on its website and/or on the intranet informing data subjects of their rights in the framework of a given procedure, information relating to the potential restriction of these rights. The information shall cover which rights may be restricted, the reasons and the potential duration.

Without prejudice to the provisions of Article 6(4), the FCH 2 JU, where proportionate, shall also inform individually all data subjects, which are considered persons concerned in the specific processing operation, of their rights concerning present or future restrictions without undue delay and in a written form.

2. Where the FCH 2 JU restricts, wholly or partly, the rights laid out in Article 5, it shall inform the data subject concerned of the restriction applied and of the principal reasons thereof, and of the possibility of lodging a complaint with the European Data Protection Supervisor or of seeking a judicial remedy in the Court of Justice of the European Union;

The provision of information referred to in paragraph 2 above may be deferred, omitted or denied if it would cancel the effect of the restriction in accordance with Article 25(8) of Regulation (EU) 2018/1725.

*Article 8***Review by the Data Protection Officer**

1. The FCH 2 JU shall, without undue delay, inform the Data Protection Officer of the JU ('the DPO') whenever the controller restricts the application of data subjects' rights, or extends the restriction, in accordance with this Decision. The controller shall provide the DPO access to the record containing the assessment of the necessity and proportionality of the restriction and document the date of informing the DPO in the record.

2. The DPO may request the controller in writing to review the application of the restrictions. The controller shall inform the DPO in writing about the outcome of the requested review.
3. The DPO shall be involved throughout the procedure. The controller shall inform the DPO when the restriction has been lifted.

Article 9

Entry into force

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

Done at Brussels, 26 May 2020.

For the Governing Board of the FCH 2 JU
Valérie BOUILLON-DELPORTE
Chair of the Governing Board

CORRIGENDA**Corrigendum to Council Decision (CFSP) 2019/797 of 17 May 2019 concerning restrictive measures against cyber-attacks threatening the Union or its Member States***(Official Journal of the European Union L 129 I of 17 May 2019)*

On page 16, Article 5(3), first subparagraph, point (a):

for: ‘(a) necessary to satisfy the basic needs of the natural persons listed in the Annex ...’,

read: ‘(a) necessary to satisfy the basic needs of the natural or legal persons, entities or bodies listed in the Annex ...’.

**Corrigendum to Council Regulation (EU) 2019/796 of 17 May 2019 concerning restrictive measures
against cyber-attacks threatening the Union or its Member States**

(Official Journal of the European Union L 129 I of 17 May 2019)

On page 4, Article 4(1), point (a):

for: 'a) necessary to satisfy the basic needs of the natural persons listed in Annex I ...',

read: 'a) necessary to satisfy the basic needs of the natural or legal persons, entities or bodies listed in Annex I ...'.

**Corrigendum to Commission Implementing Regulation (EU) 2019/1746 of 1 October 2019 amending
Implementing Regulation (EU) 2017/1185 laying down rules for the application of Regulations (EU)
No 1307/2013 and (EU) No 1308/2013 of the European Parliament and of the Council as regards
notifications to the Commission of information and documents**

(Official Journal of the European Union L 268 of 22 October 2019)

On page 6, the content of footnote 4 is replaced with the following:

- ⁴ Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (OJ L 111, 25.4.2019, p. 59).'
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