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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2020/178

of 31 January 2020

on the presentation of information to passengers arriving from third countries and to clients of postal services and of certain professional operators concerning the prohibitions as regards the introduction of plants, plant products and other objects into the Union territory in accordance with Regulation (EU) 2016/2031 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/2031 of the European Parliament and of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC⁽¹⁾, and in particular the fourth subparagraph of Article 45(1) thereof,

Whereas:

- (1) Regulation (EU) 2016/2031 requires Member States, seaports, airports and international transport operators to make available to passengers information concerning prohibitions and requirements for the introduction of plants, plant products and other objects into the Union territory.
- (2) Postal services operators and professional operators involved in sales through distance contracts also are to make available that information to their clients.
- (3) The information should be presented in an easy and immediately understandable manner. It should therefore visually represent following prohibited items carried by passengers: plants for planting, cut flowers, fruits and vegetables.
- (4) For the purpose of clarity, it should also include a message about the most important rules and requirements concerning the introduction of plants, plant products and other objects into the Union territory. That message should contain information about the fruits that are exempted from the requirement for a phytosanitary certificate, pursuant to Article 73 of Regulation (EU) 2016/2031, the third countries from which a phytosanitary certificate is not required and the Union territories from which that certificate is required.
- (5) That information should be made available at all points of entry into the Union or on transport means moving into the Union. Member States should be free also to select additional points, such as the points of departure from the Union to third countries, in order to make this information accessible in due time to the passengers who will later be returning from those countries to the Union.
- (6) This Regulation should enter into force on the third day following that of its publication, in order to ensure that passengers, as well as the clients of postal services and professional operators involved in sales through distant contacts, are informed as soon as possible about the application of the new rules.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽¹⁾ OJ L 317, 23.11.2016, p. 4.

HAS ADOPTED THIS REGULATION:

Article 1

Presentation of information to passengers arriving from third countries and to clients of postal services and of certain professional operators

1. Member States, seaports, airports and international transport operators shall display posters with the information set out in the Annex at all points of entry into the Union, or on all transport means moving into the Union, for the benefit of the passengers arriving from third countries.

Member States, seaports, airports and international transport operators may display posters as provided for in the first subparagraph also at points of departure out of the Union.

2. Postal services operators and professional operators involved in sales through distance contracts shall make available to their clients, at least through the internet, the information set out in the Annex.

3. The information set out in the Annex shall be placed at easily visible points, both in physical locations as well as on the internet.

Article 2

Entry into force

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

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

Done at Brussels, 31 January 2020.

For the Commission

The President

Ursula VON DER LEYEN

ANNEX

Poster referred to in Article 1



COMMISSION IMPLEMENTING REGULATION (EU) 2020/179

of 3 February 2020

approving amendments to the specification for a spirit drink whose name is registered as a geographical indication (Berliner Kummel)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 ⁽¹⁾, and in particular Article 30(2) thereof,

Whereas:

- (1) Pursuant to Article 21 in conjunction with Article 17(5) of Regulation (EC) No 110/2008 of the European Parliament and of the Council ⁽²⁾, the Commission has examined Germany's application of 28 September 2017 for the approval of amendments to the technical file for the geographical indication 'Berliner Kummel', protected under Regulation (EC) No 110/2008.
- (2) Regulation (EU) 2019/787, which replaces Regulation (EC) No 110/2008, entered into force on 25 May 2019. Under Article 49(1) thereof, Chapter III of Regulation (EC) No 110/2008 on geographical indications is repealed with effect from 8 June 2019. Under Article 22(2) of Regulation (EU) 2019/787, technical files submitted as part of any application before 8 June 2019 under Regulation (EC) No 110/2008 shall be deemed to be product specifications.
- (3) After concluding that the application complied with Regulation (EC) No 110/2008, the Commission published the amendment application in the *Official Journal of the European Union* ⁽³⁾ as required by Article 17(6) of that Regulation, in accordance with the first subparagraph of Article 50(4) of Regulation (EU) 2019/787.
- (4) As no notice of opposition under Article 27(1) of Regulation (EU) 2019/787 has been received by the Commission, the amendments to the specification should be approved pursuant to Article 30(2) of that Regulation, which applies *mutatis mutandis* to product specification amendments,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the specification for the name 'Berliner Kummel', published in the *Official Journal of the European Union*, are hereby approved.

Article 2

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

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

Done at Brussels, 3 February 2020.

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

⁽¹⁾ OJ L 130, 17.5.2019, p. 1.

⁽²⁾ Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008, p. 16).

⁽³⁾ OJ C 316, 20.9.2019, p. 24.

COMMISSION IMPLEMENTING REGULATION (EU) 2020/180

of 7 February 2020

concerning the authorisation of a preparation of *Bacillus subtilis* KCCM 10673P and *Aspergillus oryzae* KCTC 10258BP as a feed additive for all animal species**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003, an application was submitted for the authorisation of a preparation of *Bacillus subtilis* KCCM 10673P and *Aspergillus oryzae* KCTC 10258BP as a feed additive for all animal species. That application was accompanied by the particulars and documents required under Article 7(3) of that Regulation.
- (3) The application concerns the authorisation of a preparation of *Bacillus subtilis* KCCM 10673P and *Aspergillus oryzae* KCTC 10258BP to be used in soybeans, to be classified in the additive category 'technological additives'.
- (4) The European Food Safety Authority ('the Authority') concluded in its opinions of 8 September 2015 ⁽²⁾ and 18 September 2018 ⁽³⁾ that, under the proposed conditions of use, the preparation of *Bacillus subtilis* KCCM 10673P and *Aspergillus oryzae* KCTC 10258BP does not have an adverse effect on animal health or the environment. However, it also concluded that the additive is considered as a skin and eye irritant and as a skin and respiratory sensitiser. Therefore, the Commission considers that appropriate protective measures should be taken to prevent adverse effects on human health, in particular as regards the users of the additive. The Authority also concluded that the additive has the potential to be efficacious to reduce the concentration of oligosaccharides of the raffinose series and trypsin inhibitor in soybeans. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (5) The assessment of the preparation of *Bacillus subtilis* KCCM 10673P and *Aspergillus oryzae* KCTC 10258BP shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

The preparation specified in the Annex, belonging to the additive category 'technological additives' and to the functional group 'other technological additives', is authorised as an additive in animal nutrition as set out in that Annex.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ EFSA Journal 2015;13(9):4230.

⁽³⁾ EFSA Journal 2018;16(5):5275.

Article 2

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

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

Done at Brussels, 7 February 2020.

For the Commission
The President
Ursula VON DER LEYEN

Identification number of the additive	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
					CFU of additive/kg of soybeans			
Category of technological additives. Functional group: other technological additives (reduction of anti-nutritional factors in soybean)								
1o01	<i>Bacillus subtilis</i> KCCM 10673P <i>Aspergillus oryzae</i> KCTC 10258BP	Additive composition: Preparation of <i>Bacillus subtilis</i> KCCM 10673P and <i>Aspergillus oryzae</i> KCTC 10258BP containing respectively a minimum of $1,2 \times 10^8$ CFU/g additive and $2,0 \times 10^8$ CFU/g additive. Characterisation of the active substance: Viable cells of <i>Bacillus subtilis</i> KCCM 10673P and <i>Aspergillus oryzae</i> KCTC 10258BP. Analytical method ⁽¹⁾ Enumeration of <i>Bacillus subtilis</i> KCCM 10673P in the feed additive, premixtures and feedingstuffs: Spread plate method on tryptone soya agar (EN 15784). Identification of <i>Bacillus subtilis</i> KCCM 10673P in the feed additive: Pulsed Field Gel Electrophoresis (PFGE). Identification of <i>Aspergillus oryzae</i> KCTC 10258BP in the feed additive: Polymerase Chain Reaction (PCR) typing.	All animal species	—	<i>Bacillus subtilis</i> $1,2 \times 10^6$ <i>Aspergillus oryzae</i> $2,0 \times 10^6$	—	1. In the directions for use of the additive and pre-mixture, indicate the storage conditions. 2. The additive shall only be used in soybeans. 3. For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address potential risks resulting from its use. Where those risks cannot be eliminated or reduced to a minimum by such procedures and measures, the additive and premixtures shall be used with personal protective equipment, including skin, eyes and breathing protection.	1 March 2030

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

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2020/181

of 7 February 2020

concerning certain interim protective measures relating to African swine fever in Greece

(notified under document C(2020) 799)

(Only the Greek text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽¹⁾, and in particular Article 9(3) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary checks applicable in intra-Union trade in certain live animals and products with a view to the completion of the internal market ⁽²⁾, and in particular Article 10(3) thereof,

Whereas:

- (1) African swine fever is an infectious viral disease affecting domestic and feral pig populations and can have a severe impact on the profitability of pig farming causing disturbance to trade within the Union and exports to third countries.
- (2) In the event of an outbreak of African swine fever, there is a risk that the disease agent might spread to other pig holdings and to feral pigs. As a result, it may spread from one Member State to another Member State and to third countries through trade in live pigs or their products.
- (3) Council Directive 2002/60/EC ⁽³⁾ lays down minimum measures to be applied within the Union for the control of African swine fever. Article 9 of Directive 2002/60/EC provides for the establishment of protection and surveillance zones in the event of outbreaks of that disease, where the measures laid down in Articles 10 and 11 of that Directive are to apply.
- (4) Greece has informed the Commission of the current African swine fever situation on its territory, and in accordance with Article 9 of Directive 2002/60/EC, it has established protection and surveillance zones where the measures referred to in Articles 10 and 11 of that Directive are applied.
- (5) In order to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade by third countries, it is necessary to describe at Union level the areas established as protection and surveillance zones for African swine fever in Greece in collaboration with that Member State.
- (6) Accordingly, pending the next meeting of the Standing Committee on Plants, Animals, Food and Feed, the areas identified as protection and surveillance zones in Greece should be set out in the Annex to this Decision and the duration of that regionalisation fixed.
- (7) This Decision is to be reviewed at the next meeting of the Standing Committee on Plants, Animals, Food and Feed,

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever (OJ L 192, 20.7.2002, p. 27).

HAS ADOPTED THIS DECISION:

Article 1

Greece shall ensure that the protection and surveillance zones established in accordance with Article 9 of Directive 2002/60/EC comprise at least the areas listed as the protection and surveillance zones in the Annex to this Decision.

Article 2

This Decision shall apply until 6 April 2020.

Article 3

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 7 February 2020.

For the Commission
Stella KYRIAKIDES
Member of the Commission

ANNEX

Greece	Areas as referred to in Article 1	Date applicable until
Protection zone	Municipality of Visaltias (Serres Regional Unit)	6 April 2020
Surveillance zone	In Thessaloniki Regional Unit: — Municipality of Lagada, — Municipality of Volvis. In Serres Regional Unit: — Municipality of Iraklia, — Municipality of Serron, — Municipality of Amfipolis, — Municipality of Emmanouil Pappa, — Municipality of Neas Zichnis.	6 April 2020

RULES OF PROCEDURE

DECISION OF THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR CYBERSECURITY

of 21 November 2019

on internal rules concerning restrictions of certain rights of data subjects in relation to processing of personal data in the framework of the functioning of ENISA

THE MANAGEMENT BOARD OF ENISA

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 Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act) ⁽²⁾, and in particular to Article 15(1) thereof,

Having regard to the opinion of the EDPS of 17 October 2019 and to the EDPS Guidance on Article 25 of the Regulation (EU) 2018/1725 and internal rules.

Whereas:

- (1) 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 ENISA, where these are not based on legal acts adopted on the basis of the Treaties.
- (2) 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.
- (3) Where ENISA 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.
- (4) Within the framework of its administrative functioning, ENISA 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, conduct assessments of cybersecurity incidents pursuant to Article 7(4) of the Regulation (EU) 2019/881, carry out investigations by the Data Protection Officer in line with Article 45(2) of Regulation (EU) 2018/1725 and internal (IT) security investigations.

ENISA 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/or 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).

- (5) ENISA, represented by its Executive Director, acts as the data controller irrespective of further delegations of the controller role within ENISA to reflect operational responsibilities for specific personal data processing operations.

⁽¹⁾ OJ L 295, 21.11.2018, p. 39.

⁽²⁾ OJ L 151, 7.6.2019, p. 15.

- (6) 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 ENISA.
- (7) The internal rules should apply to all processing operations carried out by ENISA 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, assessments of cybersecurity incidents pursuant to Article 7(4) of the Regulation (EU) 2019/881, 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).
- (8) 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 ENISA to national authorities and international organisations outside of its administrative investigations.
- (9) In the cases where these internal rules apply, ENISA has to give justifications explaining why the restrictions are strictly necessary and proportionate in a democratic society and respect the essence of the fundamental rights and freedoms.
- (10) Within this framework, ENISA 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.
- (11) However, ENISA 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.
- (12) ENISA may thus restrict the information for the purpose of protecting the investigation and the fundamental rights and freedoms of other data subjects.
- (13) ENISA should periodically monitor that the conditions that justify the restriction apply and lift the restriction as far as they do no longer apply.
- (14) The Controller should inform the Data Protection Officer at the moment of deferral and during the revisions.
- (15) Due to the importance of the internal rules for the protection of data subject's rights, the Decision should enter into force as soon as possible after its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS DECISION:

Article 1

Subject-matter and scope

1. This Decision lays down rules relating to the conditions under which ENISA 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 the Regulation (EU) 2018/1725.
2. Within the framework of the administrative functioning of ENISA, this Decision applies to the processing operations on personal data by ENISA 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, conducting assessments of cybersecurity incidents pursuant to Article 7(4) of the Regulation (EU) 2019/881, 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/or 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 ENISA 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 and safeguards

1. The safeguards in place to avoid data breaches, leakages or unauthorised disclosure are the following:
 - (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 ENISA'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.
2. The controller of the processing operations is ENISA, 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 ENISA.
3. 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 5(1).
4. Where ENISA 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 ENISA'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 3

Restrictions

1. Any restriction shall only be applied by ENISA to safeguard:
 - (a) 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;
 - (b) 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;
 - (c) the internal security of Union institutions and bodies, including of their electronic communications networks;

- (d) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
- (e) a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority in the cases referred to in points (a) and (b);
- (f) the protection of the data subject or the rights and freedoms of others.

2. The assessment of cybersecurity incidents carried out by ENISA pursuant to Article 7(4) of the Regulation (EU) 2019/881 (Cybersecurity Act) falls under paragraph 1 point (b) of this Article.

3. As a specific application of the purposes described in paragraph 1 above, ENISA may apply restrictions in relation to personal data exchanged with Commission services or other Union institutions, bodies, agencies and offices, competent authorities of Member States or third countries or international organisations, respectively in the following circumstances:

- (a) where the exercise of those rights and obligations could be restricted by Commission services or other Union institutions, bodies, agencies and offices 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;
- (b) where the exercise of those rights and obligations could be restricted by competent authorities of Member States on the basis of acts referred to in Article 23 of Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽³⁾, 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 ⁽⁴⁾;
- (c) where the exercise of those rights and obligations could jeopardise ENISA'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, ENISA shall consult the relevant Commission services, Union institutions, bodies, agencies, offices or the competent authorities of Member States unless it is clear to ENISA that the application of a restriction is provided for by one of the acts referred to in those points.

4. Any restriction 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.

5. If the application of restriction is considered, a necessity and proportionality test shall be carried out based on the present rules. It shall be documented through an internal assessment note for accountability purposes on a case by case basis.

6. Restrictions shall be 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.

Article 4

Review by the Data Protection Officer

1. ENISA shall, without undue delay, inform the Data Protection Officer of the Agency ('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. ENISA shall involve the DPO throughout all the relevant procedures and the DPO's involvement shall be documented.

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⁾ 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).

⁽⁴⁾ 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).

3. The controller shall inform the DPO when the restriction has been lifted.

Article 5

Provision of information to data subject

1. In duly justified cases and under the conditions stipulated in this Decision, the right to information may be restricted 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;
- (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) assessments of cybersecurity incidents carried out by ENISA pursuant to Article 7(4) of the Regulation (EU) 2019/881, in line with Article 3 paragraph 2 of this Decision.

ENISA shall include in the data protection notices, privacy statements or records in the sense of Article 31 of the 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.

2. Without prejudice to the provisions of paragraph 3 of this Article, ENISA, 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.

3. Where ENISA restricts, wholly or partly, the provision of information to the data subjects referred to in paragraph 2 of this Article, it shall record the reasons for the restriction, the legal ground in accordance with Article 3 of this Decision, 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. Upon request, they shall be made available to the European Data Protection Supervisor.

4. The restriction referred to in paragraph 3 of this Article shall continue to apply as long as the reasons justifying it remain applicable.

Where the reasons for the restriction no longer apply, ENISA shall provide information to the data subject on the principal reasons on which the application of a restriction is based. At the same time, ENISA shall inform the data subject of the right of lodging a complaint with the European Data Protection Supervisor at any time or of seeking a judicial remedy in the Court of Justice of the European Union.

ENISA 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.

Article 6

Right of access by data subject

1. In duly justified cases and under the conditions stipulated in this Decision, the right to access may be restricted by the controller in the context of the following processing operations, where necessary and proportionate:

- (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;
- (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) assessments of cybersecurity incidents carried out by ENISA pursuant to Article 7(4) of the Regulation (EU) 2019/881, in line with Article 3 paragraph 2 of this Decision.

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, ENISA shall limit its assessment of the request to such personal data only.

2. Where ENISA restricts, wholly or partly, the right of access, referred to in Article 17 of Regulation (EU) 2018/1725, it shall take the following steps:

- (a) it shall inform the data subject concerned, in its reply to the request, 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;
- (b) it shall document in an internal assessment note the reasons for the restriction, including an assessment of the necessity, proportionality of the restriction and its duration.

The provision of information referred to in point (a) 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.

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

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

Article 7

Right of rectification, erasure and restriction of processing

1. In duly justified cases and under the conditions stipulated in this Decision, the right to rectification, erasure and restriction may be restricted by the controller in the context of the following processing operations, where necessary and appropriate:

- (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;
- (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) assessments of cybersecurity incidents carried out by ENISA pursuant to article 7(4) of the Regulation (EU) 2019/881, in line with Article 3 paragraph 2 of this Decision.

2. Where ENISA restricts, wholly or partly, the application of the right to rectification, erasure and restriction of processing referred to in Articles 18, 19(1) and 20(1) of Regulation (EU) 2018/1725, it shall take the steps set out in Article 6(2) of this Decision and in accordance with Article 6(3) thereof.

*Article 8***Communication of a personal data breach to the data subject and confidentiality of electronic communications**

1. In duly justified cases and under the conditions stipulated in this Decision, the right to the communication of a personal data breach may be restricted by the controller in the context of the following processing operations, where necessary and appropriate:

- (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) processing internal and external complaints;
- (e) internal audits;
- (f) the investigations carried out by the Data Protection Officer in line with Article 45(2) of Regulation (EU) 2018/1725;
- (g) (IT) security investigations handled internally or with external involvement (e.g. CERT-EU);
- (h) assessments of cybersecurity incidents carried out by ENISA pursuant to article 7(4) of the Regulation (EU) 2019/881, in line with Article 3 paragraph 2 of this Decision.

2. In duly justified cases and under the conditions stipulated in this Decision, the right to confidentiality of electronic communications may be restricted by the controller in the context of the following processing operations, where necessary and appropriate:

- (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 procedures for cases of harassment;
- (e) processing internal and external complaints;
- (f) (IT) security investigations handled internally or with external involvement (e.g. CERT-EU).
- (g) assessments of cybersecurity incidents carried out by ENISA pursuant to Article 7(4) of the Regulation (EU) 2019/881, in line with Article 3 paragraph 2.

3. Where ENISA restricts the communication of a personal data breach to the data subject or the confidentiality of electronic communications referred to in Articles 35 and 36 of Regulation (EU) 2018/1725, it shall apply the provisions of Article 5(3) of this Decision. Article 5(4) of this Decision shall apply.

*Article 9***Entry into force**

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

Done at Athens, 21 November 2019.

For ENISA

Jean Baptiste DEMAISON

Chairperson of the Management Board

DECISION OF THE GOVERNING BOARD OF FUSION FOR ENERGY**of 9 December 2019****on internal rules concerning restrictions of certain rights of data subjects in relation to processing of personal data in the framework of the functioning of fusion for energy**

THE GOVERNING BOARD

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 Decision 2007/198/Euratom of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it ⁽²⁾ (hereinafter 'Fusion for Energy') in particular Article 6 thereof,

Having regard to the Statutes annexed to the aforementioned Decision in particular Article 10 thereof,

Having regard to the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union ('Staff Regulations'), in particular Article 2(3) and Article 30 of Annex IX thereto,

Having regard to Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 ⁽³⁾,

Having regard to the Guidance of the European data Protection Supervisor (EDPS) of 18 December 2018 and to its Opinion of 26 July 2019 following the notification for the purpose of Article 41(2) of Regulation (EU) 2018/1725,

After consulting the Staff Committee,

Whereas:

- (1) Fusion for Energy carries out its activities in accordance with the Statutes annexed to the Decision 2007/198/Euratom.
- (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 Fusion for Energy 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 Fusion for Energy 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.

⁽¹⁾ OJ L 295, 21.11.2018, p. 39.

⁽²⁾ OJ L 90, 30.3.2007, p. 58.

⁽³⁾ OJ L 248, 18.9.2013, p. 1.

- (5) Within the framework of its administrative functioning, Fusion for Energy may conduct administrative inquiries and disciplinary proceedings in line with the rules laid down in the Staff Regulations.

Fusion for Energy may also carry out in particular 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, process medical data, conduct internal audits, carry out investigations 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).

- (6) Fusion for Energy 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/or 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) Fusion for Energy, represented by its Director, acts as the data controller irrespective of further delegations of the controller role within Fusion for Energy 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 Fusion for Energy.
- (9) The internal rules should also apply to processing operations carried out prior to the opening of the procedures referred to recital 5, 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 Fusion for Energy to national authorities and international organisations outside of its administrative investigations.

These internal rules should also apply to activities related to cooperation with, and the transmission of information regarding an administrative inquiry or disciplinary proceedings to EU institutions and bodies. To that effect, Fusion for Energy should consult those institutions, bodies, offices, agencies, authorities or organisations on the relevant grounds for imposing restrictions and on the necessity and proportionality of the restrictions.

- (10) In the cases where these internal rules apply Fusion for Energy has to give justifications explaining why the restrictions are strictly necessary and proportionate in a democratic society and respect the essence of the fundamental rights and freedoms.
- (11) Within this framework Fusion for Energy 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.
- (12) However, Fusion for Energy may be obliged to restrict the information to data subject and other data subject's rights to protect, in particular, its own investigations and procedures, the investigations and proceedings of other public authorities, as well as the rights of other persons related to its investigations or other procedures.
- (13) Fusion for Energy may thus restrict the information for the purpose of protecting the investigation and the fundamental rights and freedoms of other data subjects.

Fusion for Energy may in particular defer the information for the purposes to protect its administrative inquiries and disciplinary proceedings, the investigations and proceedings of other public authorities as well as to protect the identity of informants and other persons involved in the procedures, including whistle-blowers and witnesses who should not suffer negative repercussions in relation to their cooperation.

Pursuant to Article 25(8) of Regulation (EU) 2018/1725, the controller may defer, omit or deny from providing information on the reasons for the application of a restriction to the data subject, if the information would cancel the effect of the restriction imposed.

- (14) Fusion for Energy should periodically monitor that the conditions that justify the restriction still exist and lift the restriction when those conditions no longer apply.
- (15) The Controller should inform the Data Protection Officer ("DPO") at the moment of deferral of information or when other restrictions of data subject rights are applied, and during the revisions,

HAS ADOPTED THIS DECISION:

Article 1

Subject-matter and scope

1. This Decision lays down rules relating to the conditions under which Fusion for Energy in the framework of its procedures set out in 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 the Regulation (EU) 2018/1725.
2. Within the framework of the administrative functioning of Fusion for Energy this Decision applies to the processing operations on personal data by Fusion for Energy for the purposes of: conducting administrative inquiries and disciplinary proceedings, as well as carrying out preliminary activities related to cases of potential irregularities reported to OLAF, processing whistleblowing cases, processing (formal and informal) procedures of harassment, processing internal and external complaints, processing medical data, conducting internal audits, carrying out investigations 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).

This Decision should also apply to Fusion for Energy's activities of assistance and cooperation provided by Fusion for Energy outside of its administrative investigations to national authorities and international organisations.

In addition, this Decision applies to activities related to cooperation with, and the transmission of information regarding an administrative inquiry or disciplinary proceedings to EU institutions and bodies, when such information is necessary for the recipient to evaluate the grounds for opening formal investigation or proceedings.

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/or 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 Fusion for Energy 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 and safeguards

1. The safeguards in place to avoid data breaches, leakages or unauthorised disclosure are the following:
 - (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 Fusion for Energy'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.

2. The controller of the processing operations is Fusion for Energy, represented by its 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 Fusion for Energy.

3. 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 5(1).

4. Where the Fusion for Energy 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 Fusion for Energy's investigations or procedures for example by destroying evidence. The risks to the rights and freedoms of other 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 3

Restrictions

1. Any restriction shall only be applied by Fusion for Energy to safeguard:
 - (a) 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;
 - (b) 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;
 - (c) the internal security of Union institutions and bodies, including of their electronic communications networks;
 - (d) the protection of judicial independence and judicial proceedings;
 - (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, Fusion for Energy may apply restrictions in relation to personal data exchanged with Commission services or other Union institutions, bodies, agencies and offices, competent authorities of Member States or third countries or international organisations, in the following circumstances:

- (a) where the exercise of those rights and obligations could be restricted by Commission services or other Union institutions, bodies, agencies and offices 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;
- (b) where the exercise of those rights and obligations could be restricted by competent authorities of Member States on the basis of acts referred to in Article 23 of Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽⁴⁾, 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 ⁽⁵⁾;
- (c) where the exercise of those rights and obligations could jeopardise Fusion for Energy'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, Fusion for Energy shall consult the relevant Commission services, Union institutions, bodies, agencies, offices or the competent authorities of Member States unless it is clear to Fusion for Energy that the application of a restriction is provided for by one of the acts referred to in those points.

- 3. Any restriction 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.
- 4. If the application of restriction is considered, a necessity and proportionality test shall be carried out based on the present rules. It shall be documented through an internal assessment note for accountability purposes on a case by case basis.
- 5. Restrictions shall be 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.

Article 4

Review by the Data Protection Officer

- 1. Fusion for Energy (the controller) shall, without undue delay, inform the Data Protection Officer of Fusion for Energy ('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 controller shall inform the DPO when the restriction has been lifted.

Article 5

Provision of information to data subject

- 1. In duly justified cases and under the conditions stipulated in this Decision, the right to information may be restricted by the controller in the context of the following processing operations:
 - (a) the performance of administrative inquiries and disciplinary proceedings;

⁽⁴⁾ 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).

⁽⁵⁾ 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).

- (b) preliminary activities related to cases of potential irregularities reported to OLAF;
- (c) whistleblowing procedures;
- (d) (formal and informal) procedures for cases of harassment;
- (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).

Fusion for Energy 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.

2. Without prejudice to the provisions of paragraph 3, Fusion for Energy, 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.

3. Where Fusion for Energy restricts, wholly or partly, the provision of information to the data subjects referred to in paragraph 2, it shall record the reasons for the restriction, the legal ground in accordance with Article 3 of this Decision, 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.

4. The restriction referred to in paragraph 3 shall continue to apply as long as the reasons justifying it remain applicable.

Fusion for Energy shall provide information to the data subject on the principal reasons on which the application of a restriction is based. At the same time, Fusion for Energy shall inform the data subject of the right of lodging a complaint with the European Data Protection Supervisor at any time or of seeking a judicial remedy in the Court of Justice of the European Union.

Fusion for Energy 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.

Article 6

Right of access by data subject

1. In duly justified cases and under the conditions stipulated in this Decision, the right to access may be restricted by the controller in the context of the following processing operations, where necessary and proportionate:

- (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;
- (e) processing internal and external complaints;
- (f) processing medical data, only in specific justified cases ⁽⁶⁾;

⁽⁶⁾ Those situations are explained in the respective Privacy Notice (e.g. accessing the medical file in presence of the F4E medical doctor) a general restriction on the access to personal notes of doctors within the framework of the invalidity procedure along the lines on the restriction provided for in Art 25 (1) (h) of the new Regulation (ie, the protection of the data subject or the rights and freedoms of others).

- (g) internal audits;
- (h) the investigations carried out by the Data Protection Officer in line with Article 45(2) of Regulation (EU) 2018/1725;
- (i) (IT) security investigations handled internally or with external involvement (e.g. CERT-EU).

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, Fusion for Energy shall limit its assessment of the request to such personal data only.

2. Where Fusion for Energy restricts, wholly or partly, the right of access, referred to in Article 17 of Regulation (EU) 2018/1725, it shall take the following steps:

- (a) it shall inform the data subject concerned, in its reply to the request, 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;
- (b) it shall document in an internal assessment note the reasons for the restriction, including an assessment of the necessity, proportionality of the restriction and its duration.

The provision of information referred to in point (a) 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.

Fusion for Energy 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.

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

Article 7

Right of rectification, erasure and restriction of processing

1. In duly justified cases and under the conditions stipulated in this Decision, the right to rectification, erasure and restriction may be restricted by the controller in the context of the following processing operations, where necessary and appropriate:

- (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;
- (e) processing internal and external complaints;
- (f) processing medical data, only in specific justified cases ⁽⁷⁾;
- (g) internal audits;
- (h) the investigations carried out by the Data Protection Officer in line with Article 45(2) of Regulation (EU) 2018/1725;
- (i) (IT) security investigations handled internally or with external involvement (e.g. CERT-EU).

⁽⁷⁾ Those situations are explained in the respective Privacy Notice (e.g. rectification is limited to administrative data).

2. Where Fusion for Energy restricts, wholly or partly, the application of the right to rectification, erasure and restriction of processing referred to in Articles 18, 19(1) and 20(1) of Regulation (EU) 2018/1725, Article 6(2) and (3) of this Decision shall apply.

Article 8

Communication of a personal data breach to the data subject and confidentiality of electronic communications

1. In duly justified cases and under the conditions stipulated in this Decision, the right to the communication of a personal data breach may be restricted by the controller in the context of the following processing operations, where necessary and appropriate:

- (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;
- (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).

2. In duly justified cases and under the conditions stipulated in this Decision, the right to confidentiality of electronic communications may be restricted by the controller in the context of the following processing operations, where necessary and appropriate:

- (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 procedures for cases of harassment;
- (e) processing internal and external complaints;
- (f) (IT) security investigations handled internally or with external involvement (e.g. CERT-EU).

3. Where Fusion for Energy restricts the communication of a personal data breach to the data subject or the confidentiality of electronic communications referred to in Articles 35 and 36 of Regulation (EU) 2018/1725, Article 5(3) and (4) of this Decision shall apply.

Article 9

Entry into force

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

Done at Barcelona, 9 December 2019.

For Fusion for Energy
Joaquín SÁNCHEZ
Chair of the Governing Board

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