Commission Decision (EU) 2020/654 of 13 May 2020 concerning national provisions notified by Germany on small and medium combustion units (notified under document C(2020) 2986) (Only the German text is authentic)

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

(notified under document C(2020) 2986)

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THE EUROPEAN COMMISSION,

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

Whereas:

I. FACTS AND PROCEDURE

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

1. *UNION LEGISLATION*

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

(2) Article 114(4) TFEU provides that '[i]f, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 36, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.'

(3) Under Article 114(6) TFEU, the Commission is to, within 6 months of a notification pursuant to Article 114(4), approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

Changes to legislation: *There are currently no known outstanding effects for the Commission Decision (EU) 2020/654. (See end of Document for details)*

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

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

(5) Pursuant to Article 6(1) of Directive 2009/125/EC 'Member States shall not prohibit, restrict or impede the placing on the market and/or putting into service, within their territories, of a product that complies with all the relevant provisions of the applicable implementing measure and bears the CE marking in accordance with Article 5 on grounds of ecodesign requirements relating to those ecodesign parameters referred to in Annex I, Part 1 which are covered by the applicable implementing measure.'

(6) Pursuant to Article 6(2) of Directive 2009/125/EC 'Member States shall not prohibit, restrict or impede the placing on the market and/or putting into service, within their territories, of a product bearing the CE marking in accordance with Article 5 on grounds of ecodesign requirements relating to those ecodesign parameters referred to in Annex I, Part 1 for which the applicable implementing measure provides that no ecodesign requirement is necessary.'

(7) Under Directive 2009/125/EC, an 'ecodesign requirement' means any requirement in relation to a product, or the design of a product, intended to improve its environmental performance, or any requirement for the supply of information with regard to the environmental aspects of a product.

(8) Pursuant to Article 15 of Directive 2009/125/EC, implementing measures are to lay down ecodesign requirements in accordance with Annex I ('method for setting generic ecodesign requirements') and Annex II ('method for setting specific ecodesign requirements').

(9) Generic ecodesign requirements aim at improving the environmental performance of products, focusing on significant environmental aspects thereof without setting limit values. Specific ecodesign requirements aim at improving a selected environmental aspect of the product. They may take the form of requirements for reduced consumption of a given resource, such as a limit on the use of a resource in the various stages of a product's life cycle, as appropriate.

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

(10) Regulation (EU) 2015/1189 is adopted under the framework of Directive 2009/125/EC. In conformity with the procedure set out in Directive 2009/125/EC, the Commission has carried out a preparatory study to analyse the technical, environmental and economic aspects of the solid fuel boilers typically used in households and for commercial purposes. The study has been carried out with stakeholders and interested

parties from the Union and third countries, and the results have been made publicly available.

(11) The environmental aspects of solid fuel boilers that have been identified as significant for the purposes of Regulation (EU) 2015/1189 are energy consumption in the use phase and emissions of particulate matter (dust), organic gaseous compounds, carbon monoxide and nitrogen oxides in the use phase.

(12) Accordingly, Annex II of Regulation (EU) 2015/1189 sets out specific ecodesign requirements applicable from 1 January 2020 for solid fuel boilers and, in particular, provides that seasonal space heating emissions of particulate matter shall not be higher than 40 mg/m^3 for automatically stoked boilers and not be higher than 60 mg/m^3 for manually stoked boilers. Those requirements are to be met for the preferred fuel and for any other suitable fuel for the solid fuel boiler.

(13) Measurements and calculation methodology are set out in Annex III of Regulation (EU) 2015/1189.

2. *NATIONAL PROVISIONS NOTIFIED*

(14) The national provisions notified by Germany are the following provisions of the 1st BImSchV:

(a) Section 5, point (1) which sets emission limit values and a measurement methodology for particulate matter (the 'first provision'). Those differ from the values and measurement methodology applicable from 1 January 2020 pursuant to Regulation (EU) 2015/1189;

(b) Section 4, point (1), in conjunction with section 3, which provides an exhaustive list of fuels that may be used in firing installations (the 'second provision'). Regulation (EU) 2015/1189 does not contain such an exhaustive list;

(c) Section 5, point (4) requires solid fuel boilers to be provided with hot water storage tanks (the 'third provision'). Regulation (EU) 2015/1189 does not contain such a requirement;

(d) Section 14 and section 15 point (1) as regards the monitoring of new and significantly modified combustion units (the 'fourth provision'). Regulation (EU) 2015/1189 sets out requirements at the time of placing solid fuel boilers on the market and does not contain provisions for further monitoring.

3. *PROCEDURE*

(15) By letter of 29 November 2019, Germany notified the Commission of its wish to maintain national provisions for solid fuel boilers under the 1st BImSchV.

(16) By letter of 10 January 2020, the Commission confirmed that it had received the notification and that the 6-month period for its examination under Article 114(6)

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TFEU had begun on 30 November 2019, the day following the day on which the notification was received.

(17) The Commission published a notice regarding the notification in the *Official Journal of the European Union*[(4)] in order to inform other interested parties of Germany's national provisions, as well as the grounds invoked to support the request. By letter of 6 February 2020, the Commission informed the other Member States and the EEA States of the notification and gave them and relevant entities the opportunity to submit comments within 30 days. The Commission received comments from Cyprus, the Czech Republic and a joint letter from Deutsche Umwelthilfe e.V., ClientEarth, Air Pollution & Climate Secretariat, European Environmental Bureau, Green Transition Denmark and ECOS.

(18) Cyprus does not oppose to the request of Germany for maintaining more stringent national provisions and considers that the reasons provided by Germany are concrete and completely documented. Cyprus also considers that rejecting the notification of Germany would eventually lead to a deterioration of air quality.

(19) The Czech Republic perceives positively and supports the German notification to maintain their national provisions derogating from the ecodesign requirements for solid fuel boilers.

(20) In their joint letter, the organisations referred to in recital 17 considered the request made by the German government to be necessary and proportionate in order to protect human health and the environment.

(21) By letter of 18 February 2020, the Commission requested complementary information from Germany. The Commission received that information by letter dated 4 March 2020.

II. ASSESSMENT

1. *ADMISSIBILITY*

(22) Under Article 114(4) and (6) TFEU a Member State may, after the adoption of a harmonisation measure, maintain its more stringent national provisions on grounds of major needs referred to in Article 36 TFEU, or relating to the protection of the environment or the working environment, provided that it notifies those national provisions to the Commission and the Commission approves those measures.

(23) The Commission takes the view that Article 114(4) and (6) TFEU may only be applied where national provisions diverge from specific provisions of a harmonisation measure. Therefore, where provisions notified under Article 114(4) do not relate to requirements covered by a harmonisation measure, their notification is to be declared inadmissible.

(24) On that basis, the admissibility of the application for each of the four German provisions is detailed below.

1.1. FIRST PROVISION: PARTICULATE MATTER EMISSIONS THRESHOLD

(25) Regulation (EU) 2015/1189 sets out specific ecodesign requirements for various parameters of solid fuel boilers, including emissions of particulate matter.

(26) The German provisions concerning particulate matter emissions which have been notified to the Commission are requirements in relation to the product and are intended to improve its environmental performance, quantified and measurable. Therefore, they constitute specific ecodesign requirements within the meaning of Directive 2009/125/EC.

(27) Whereas under the 1st BImSchV particulate matter emissions are measured for solid fuel boilers within four weeks of installation, conformity assessment under Regulation (EU) 2015/1189 is to be made using the design control procedure set out in Annex IV to Directive 2009/125/EC or the management system set out in Annex V to that Directive. On that basis, under comparable but not strictly equivalent circumstances, at 10 % oxygen content, Section 5 of the 1st BImSchV sets a limit value for emissions of 27,5 mg/m^3, whereas Regulation (EU) 2015/1189 sets limit values of 40 mg/m^3 and 60 mg/m^3 for, respectively, automatically stoked and manually stoked solid fuel boilers.

(28) The German provisions concerning particulate matter emissions therefore diverge from the provisions of Regulation (EU) 2015/1189 in that they are more stringent.

(29) In accordance with Article 114(4) TFEU, the German notification is supplemented by a description of the grounds related to human health, which constitutes a major need referred to in Article 36 TFEU, and related to the protection of the environment. It is also supplemented by an assessment of the impact on trade.

(30) Therefore, the Commission considers that the application by Germany with a view to obtaining authorisation to maintain its national provisions on particulate matter emissions is admissible under Article 114(4) TFEU.

1.2. SECOND PROVISION: USABLE FUELS

(31) Section 3 of the 1st BImSchV sets out a restrictive list of fuels that can be used in firing installations.

(32) As that provision relates to the consumption of energy and of other resources during the use phase of solid fuel boilers and anticipated emissions to air, water or soil, the German provisions related to usable fuels constitute ecodesign requirements within the meaning of Directive 2009/125/EC.

(33) Pursuant to Article 6(2) of Directive 2009/125/EC, ‘Member States shall not prohibit, restrict or impede the placing on the market and/or putting into service, within their territories, of a product bearing the CE marking in accordance with Article 5 on grounds of ecodesign requirements relating to those ecodesign parameters referred to