DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2017/122

of 23 January 2017

concerning the applicability of Article 34 of Directive 2014/25/EU of the European Parliament and of the Council to contracts awarded for activities related to peat production in Finland

(notified under document C(2017) 237)

(Only the Finnish and Swedish texts are authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ([1]) and in particular Article 30(5) thereof,

Having regard to Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement procedures of entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC ([2]) and in particular Article 35(3) thereof,

Having regard to the request submitted by Vapo Oy,

After consulting the Advisory Committee for Public Contracts,

Whereas:

1. FACTS

1.1. The Request

(1) On 2 February 2016, the Commission received from Vapo Oy (hereinafter referred to as, 'Vapo' or 'the Applicant') a request pursuant to Article 30 of Directive 2004/17/EC (hereinafter referred to as 'the Request').

(2) Vapo is a public undertaking, where the Finnish State holds 50,1 % of the shares and 49,9 % are held by Suomen Energiavarat Oy, a company owned by municipal energy companies and electricity cooperatives.

(3) The Request concerns activities relating to production of peat in Finland.

(4) The Request was accompanied by a statement of the Finnish Competition and Consumer Authority (hereinafter referred to as NCA), dated 2 November 2015. The Commission considers that document does not qualify as a reasoned and substantiated opinion in the sense of the second paragraph of Article 35 of Directive 2014/25/EU, since it is a simple statement that the conditions mentioned are met without providing any arguments in the support of that statement ([3]).

([1]) OJ L 134, 30.4.2004, p. 1.
([2]) OJ L 94, 28.3.2014, p. 243.
([3]) According to this opinion, the NCA 'sees no particular reason to oppose the granting of an exemption from the public procurement rules'. However the NCA opinion does not substantiate the conclusions therein. In particular, the opinion does not include any reference to the first condition for exemption: the free access to the market and does not conclude on a current precise definition of the relevant product market or the geographic market.

(5) The Commission requested additional information to the Applicant by emails of 10 March 2016, 2 June 2016, 6 July 2016, 8 July 2016 and 23 September 2016. The replies to the request for information were transmitted by emails, by the Applicant, on 6 April 2016, 16 June 2016, 26 August 2016 and 30 September 2016.

(6) In parallel, on 7 June 2016 the Commission requested additional information from the Finnish authorities. The reply was transmitted by the Finnish authorities, by email of 26 September 2016. The conclusions therein were based on a survey carried out by the Finnish NCA on 24 customers of Vapo, eight of its competitors and on information received from the association of peat producers. Respondents were asked about their use of fuels, ability to switch the fuels, the impact of a hypothetical change in the price of fuel, the economically viable transport distances, the fuel prices, the barriers to entering the market, the procurement process for peat bogs, and the evolution of the peat and wood fuel markets over the next few years.

1.2. **Production of peat in Finland**

(7) Peat is a highly organic material found in damp regions and composed of partially decayed vegetable matter: it is cut and dried for use as fuel. In Finland peat is mainly used for electricity generation and district heating. In total, peat represents 4 % of the total generation fuel mix in 2014 in Finland ([4]).

(8) Finland has a total surface of 9 million hectares of peat bogs, out of which 1,2 million ha is suitable for peat production ([5]). However less than 10 % of the area suitable for peat production is actually used for production ([6]). The location of active production is determined by the competitive situation, given the relatively short viable economically viable transportation distance of peat of only 150 km ([7]).

(9) Finland has around 23 million hectares of forest, and it is an important supplier of forest products to global markets ([8]).

(10) Peat and wood fuels are used as fuels in approximately 400 power and heating plants across Finland.

(11) Vapo is the sole peat producer active on the entire national territory. Finland has also a number of regional producers and about 300 local producers, and some of the bigger power plants have their own areas for peat production.

(12) Wood fuels are supplied by five national producers, 79 forest management associations and hundreds of local producers ([9]).

2. **LEGAL FRAMEWORK**

(13) Directive 2014/25/EU applies to the award of contracts for the pursuit of activities related to exploitation of a geographical area for the purpose of extracting coal or other solid fuels, unless this activity is exempted pursuant to Article 34 of that Directive.

(14) Pursuant to Article 34 of Directive 2014/25/EU, contracts intended to enable the performance of an activity to which that Directive applies are not to be subject to that Directive if, in the Member State in which it is carried out, the activity is directly exposed to competition on markets to which access is not restricted.

(15) Direct exposure to competition is assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. Access is deemed to be unrestricted if the Member State has implemented and applied the relevant Union legislation opening a given sector or a part of it. That legislation is listed in Annex III to Directive 2014/25/EU. However for extraction of coal and other solid fuels, that annex does not list any relevant legislation liberalising this sector. Consequently, free access to the market cannot be presumed, and it has to be demonstrated *de facto* and *de jure*.

([4]) National Report 2016 to the Agency for the Cooperation of Energy Regulators and to the European Commission, p. 35.
([5]) Applicant's letter of 26 August 2016, p. 6.
([6]) Applicant's letter of 26 August 2016, pp. 6 and 7.
([7]) Request, Section 3.2, p. 12.
([8]) 'Forest Finland in brief' http://www.metla.fi/metinfo/tilasto/julkaisut/muut/Forest-Finland_2013.pdf
([9]) Section 5.1 of the Request, p. 13.

(16) This Decision is without prejudice to the application of the rules on competition and other fields of Union law. In particular, the criteria and the methodology used to assess direct exposure to competition under Article 34 of Directive 2014/25/EU are not necessarily identical to those used to perform an assessment under Article 101 or 102 of the Treaty or Council Regulation (EC) No 139/2004 ([10]). This point was upheld also by the Court in a recent judgement ([11]).

3. **ASSESSMENT**

3.1. **Free access to the market**

(17) Since free access to the market cannot be presumed, it has to be demonstrated *de facto* and *de jure*.

(18) The Applicant argues that there are no legal restrictions regarding access to the peat market. Peat production requires an environmental permit but this cannot be deemed to restrict access to the market. Moreover, there are no special or exclusive rights attached to peat production.

(19) An examination of the legal provisions applicable to issuing licenses for peat production, in Finland, shows that such licences are currently granted on non-discriminatory basis. In order to start peat production, an environmental permit is needed. Although the process of obtaining such permit may be very lengthy (from one to four years), the procedure for granting the permit, and the criteria for granting it are the same for all market operators, therefore, this cannot be deemed to restrict access to the market from a public procurement perspective. For the purposes of this decision, the possibility to obtain a licence for production of peat could be considered, *de jure*, free.

(20) A significant part of the peat land suitable for peat production has not been used yet ([12]). The Applicant also argues that the number of peat producers has grown in the recent years ([13]), which would support the argument that the access to the market is free *de facto*.

(21) The free access of this activity was confirmed by the Finnish authorities ([14]).

(22) In view of the above, for the purposes of evaluating the conditions laid down in Article 34 of Directive 2014/25/EU and without prejudice to competition law, or the application of any other field of EU law, the access to the market for exploitation of a geographical area for the purposes of extracting peat, can be considered free *de facto* and *de jure*.

3.2. **Direct exposure to competition**

(23) Direct exposure to competition should be evaluated on the basis of various indicators, none of which are, per se, decisive. In respect of the markets concerned by this decision, the market share of the main players on a given market constitutes one criterion which should be taken into account. Given the characteristics of the markets concerned, further criteria may also be taken into account.

(24) Moreover, such definition, as seen above, does not in any way prejudge the application of Articles 101 and/or 102 of the Treaty and merger control rules under Regulation (EC) No 139/2004 as well as of all the applicable Regulations and Commission's notices and guidelines related to the enforcement of Union competition rules, including the relevant provisions regarding market definition and market shares calculation.

(25) The aim of this Decision is to establish whether the services concerned by the Request are exposed to such a level of competition for public procurement purposes (in markets to which access is not restricted within the meaning of Article 34 of Directive 2014/25/EU) which will ensure that, also in the absence of the discipline brought about by the detailed procurement rules set out in Directive 2014/25/EU, procurement for the pursuit of the activities concerned will be carried out in a transparent, non-discriminatory manner based on criteria allowing purchasers to identify the solution which overall is the economically most advantageous one.

([10]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).
([11]) *Österreichische Post AG* v *Commission*, T-463/14, EU:T:2016:243, paragraph 28.
([12]) See footnote 6.
([13]) Applicant's letter of 16 June 2016, last paragraph, p. 3 and first three paragraphs, p. 4.
([14]) Finnish authorities' letter of 26 September 2016, page 3.

(26) Vapo is the only contracting entity active in the peat market in Finland, thus the only entity subject to the Union public procurement rules. In this context it is important to keep in mind that the companies which are not subject to the public procurement procedures, when acting on these markets, have the possibility to bring competitive pressure on the Applicant.

3.2.1 *Relevant product market*

(27) The Request covers production and wholesale of peat. The producers extract and process peat and sell it directly to different plants without intermediaries. When considering competition in the market for production of peat, regard must be had to the links between production and first sale/wholesale distribution of the peat extracted. For the purposes of this decision, and without prejudice to application of other EU law, the production and wholesale of peat will be considered together in the same product market.

(28) The Applicant argues that peat belongs to the same relevant market as, at least wood fuels (i.e. forest chips and forest industry by-products). Vapo is active in both markets for peat and wood, but its sales are mainly of peat.

(29) Previous practice ([15]) of the Finnish NCA considered that peat and wood belong to separate product markets, but left the definition open. The differentiation in market definition for peat and wood was based on the following arguments: the high investment costs involved in switching/changing the technology, different technical qualities of peat and wood, shortages in the wood supply, lack of a specific market price for wood fuels and long-term agreements. The Commission assessed the current situation of the market, by evaluating the pertinence of the arguments above.

Technological changes

(30) The Applicant argues that one of the most significant changes compared to the time of the previous decisions by the Finnish NCA relate to the changes in the plant's burning technology which resulted in an increase of wood fuel consumption, and a decrease of peat consumption. It particular, the Applicant argues that it is nowadays possible to combust peat and wood, practically in all heating plants in Finland. This lead to an increase of consumption of wood fuels in the past 15 years ([16]).

(31) The Finnish NCA confirmed that over the past few years peat has been facing an increasing competitive pressure from wood ([17]). The Finnish NCA observed that energy producers carried out investment in multi-fuel plants, which can use peat, wood and even coal, in order to allow their maximum of flexibility vis-à-vis different market conditions as well as environmental and taxation policies.

(32) The 20 largest peat-users ([18]) in Finland are currently all using peat fuel along with wood and also with coal (for plants situated along the coast) ([19]).

(33) Out of the 400 power and heating plants using peat and wood, only less than 20 small heating plants are using peat alone ([20]). However, the consumption of these plants is marginal ([21]).

Technical qualities of peat and wood

(34) As regards the technical differences, the Commission notes that nowadays technically efficient burning can be achieved by adding chemicals together with wood.

([15]) Decision No 267/61/94 of 5 September 2000, Decision No 021/81/2000 of 8 March 2001, pp. 5, 7, 8.
([16]) According to the Applicant's submission of 22 January 2016, page 2, para. 2; Applicant's letter of 16 June 2016, page 5, last but one and last paragraph.
([17]) Finnish authorities' letter of 26 September 2016, p. 2
([18]) Accounting for 56 % of the total peat consumption in 2014.
([19]) Request, Section 3.1, p. 9.
([20]) Applicant's letter of 6 April 2016, p. 14.
([21]) Less than 1 % of the total peat consumption.

(35) It is noted that using only wood increases the corrosion of the boiler and a minimum percentage of peat (which is naturally sulphurous), coal or chemicals such as sulphur or lime are usually added in the combustion process to prevent corrosion. The optimised percentage of fuel peat needed varies significantly, depending on the plant technology, on the planned emission, and it ranges between 0 and 60 % ([22]).

(36) The Commission queried ([23]) the Applicant with regards to the seasonal patterns in the supply mix of peat and wood during a year, more precisely whether customers had to use *de facto* only peat or only wood. The Applicant explained ([24]) that the consumption of peat is the highest from January to March, while in the summer the consumption is low as the fuel is not needed for heating. The Applicant used as example the situation of 2015 when temperatures were very low ([25]) and district heating plants used more peat and oil instead of wood. However, the volumes replaced were marginal in the overall consumption.

Wood fuel availability

(37) As regards shortages of wood, the Applicant argues that the current situation is completely different from the one at the time of the previous NCA decisions, as the operators invested in wood harvesting machinery which led to a substantial increase of the market for wood ([26]).

(38) According to the Request ([27]) the availability of alternative fuels to peat is good. In the north and the east of Finland wood fuels are readily available, while in the southern and western areas the availability of domestic wood fuels may limit the increase of the use of wood chips in the future ([28]). The alternative fuels used are coal (on the coastal regions), wood imported from Russia and gas (where gas pipelines are located). Although demand may exceed supply of wood, this is only on a temporary basis ([29]).

(39) Finnish NCA indicated that 'Today the markets for both forest chips and by-products of the forest industry have become more commercialised and have strengthened their position in comparison with peat.' ([30])

(40) According to the data publicly available ([31]), the time series on energy sources for electricity generation show a steady increase in respect of wood fuel consumption and a decrease in respect of peat, in particular from 2010 onwards.

Fuel pricing

(41) Finland benefits from operating aid schemes ([32]) for forest-chip-fired power plants, which aim to increase renewable energy generation by incentivising a fuel switch from peat to biomass.

(42) The EU 2020 target of energy from renewable sources for Finland is 38 %. The share of energy from renewable sources in the gross final consumption of energy in Finland increased from 28,5 % in 2005 to 36,8 % in 2013 ([33]).

(43) The Applicant confirms ([34]) that all of its main customers are eligible for the abovementioned aid.

([22]) Finnish authorities' letter of 26 September 2016, p. 2; Applicant's letter of 30 September 2016, page 2.
([23]) Commission letter of 2 June 2016, p. 3.
([24]) Applicant's letter of 16 June 2016, p. 10.
([25]) Temperatures below minus 20 degrees, which lasted for three weeks.
([26]) Applicant's letter of 16 June 2016, page 1.
([27]) Request, Section 3.2, p. 13.
([28]) Applicant's letter of 16 June 2016, p. 7.
([29]) See footnote 28.
([30]) Finnish authorities' letter of 26 September 2016, p. 2.
([31]) Statistics Finland http://pxweb2.stat.fi/sahkoiset_julkaisut/energia2015/html/engl0002.htm
([32]) State aid SA.42218(2015/N) Finland — Operating aid for forest-chip-fired power plants; C(2016) 976; State aid SA.31204(2011/N) Finland — Operating aid for small wood-fired CHP-plants and forest-chip power plants; C(2011) 1950 (OJ C 153, 24.5.2011, p. 2).
([33]) http://eur-lex.europa.eu/resource.html?uri=cellar:4f8722ce-1347-11e5-8817-01aa75ed71a1.0001.02/DOC_2&format=PDF, p. 2.
([34]) Applicant's letter of 26 August 2016, p. 5.

(44) The amendment of the aid level imposed by the Government ([35]) came into force on 1 March 2016. According to this act, the maximum subsidy level of the electricity produced by forest chips was increased from EUR 15,90 per MWh to EUR 18 per MWh.

(45) In Finland, energy taxes are levied on electricity, coal, natural gas, fuel peat, tall oil and liquid fuels. According to the latest legislation ([36]), the new tax on fuel peat is EUR 1,90 per MWh, decreasing from 3,40 EUR per MWh. This new tax came into force on 1 March 2016 as well.

(46) The use of peat and other fossil fuels, as opposed to the use of wood, in the energy sector is subject to the CO_2 emission tax. At the time of the previous NCA decision ([37]), the emission tax was not in force. The introduction of this tax prompted large investments in new multi-fuel plants and in the conversion of old plants in such a way that they can use both wood and other fossil fuels.

(47) The Applicant argues ([38]) that considering all taxes for peat and aid for wood, the comparison of peat fuel cost to customer (including peat tax and CO_2 emission rights cost) and wood fuel cost, shows that both wood fuels and peat fuel have comparable costs to the customer, with wood still cheaper than peat.

(48) The Finnish authorities confirmed ([39]), that, in the course of the survey carried out among Vapo's customers and competitors 'many respondents mentioned that, in practice, the final cost to the customers is currently the same for peat and wood, due to the levels of aid, tax and emission allowances in force'.

Long-term contracts

(49) At the time of the previous NCA decisions, there were shortages of peat supplies and wood fuel was not an alternative to such a degree than it is today. In order to secure adequate amounts of supplies, the customers were willing to conclude long-term contracts.

(50) Vapo operates currently on the basis of framework agreements with its customers. These frameworks are typically valid for more than one year, but the prices and the amounts of supplies are agreed annually or for a shorter period of time, based on the market situation. Vapo has no exclusive distribution contracts and all its customers have a possibility to procure peat from other producers. Thus, in spite of existing framework agreements customers are not bound to long-term commitments to purchase from Vapo.

(51) Having due regard to the current situation of the market for peat and wood, as described in recitals 27 to 50 and also in the light of the current State aid scheme for wood it appears that the peat fuel is facing significant competitive pressure from, inter alia, wood fuel.

(52) In view of the above, for the purposes of evaluating the conditions laid down in Article 34 of Directive 2014/25/EU and without prejudice to competition law, or the application of any other EU law, the Commission considers that peat fuel and wood fuel (forest chips and forest industry by-products) are currently competing against each other.

3.2.2. *Relevant geographic market*

(53) According to the Applicant the relevant market covers the national territory of Finland. The Applicant, as well as other peat and wood producers is active in Finland.

(54) Previous decision ([40]) of the NCA found that the geographical market for peat was national in scope. The same conclusion is upheld by the Finnish authorities, in the letter of 26 September 2016 ([41]).

([35]) Government Decree on the Production Subsidy for Electricity Produced from Renewable Energy Sources.
([36]) Act Amending the Appendix of the Act on Excise Tax on Electricity and Certain Fuels (1724/2015)
([37]) NCA Decision No 021/81/00, 8 March 2001.
([38]) Applicant's letter of 16 June 2016, p. 13.
([39]) Finnish authorities' letter of 26 September 2016, p. 2.
([40]) Decision No 021/81/2000 of 8 March 2001, p. 9.
([41]) Letter of the Finnish authorities of 26 September 2016, p. 3.

(55) Peat fuel is typically produced as near as possible to the location of the customer. Typically, supplies to one customer are usually delivered from tens of different locations of peat bogs ([42]). The economically viable maximum transportation distance was estimated by the Applicant at around 150 km for peat fuel, 50 km for wood chips and 150 km for wood by-products.

(56) Following the market survey carried out by the NCA in 2016, the economically viable distance for transportation was estimated at160 km for peat, 110 km for wood chips and 155 km for wood by-products ([43]).

(57) The Applicant argues that within the economically viable supply area of a plant using peat or wood fuel, there are several peat bogs or sources of wood and, conversely, that peat and wood operators sell their fuel products to different plants. The same arguments were used by the NCA in previous decision ([44]), when defining the geographic market as national.

(58) The Commission notes that for the 20 largest peat users in Finland are all using peat fuel along with wood and also with coal, and each of them have more than one supplier of peat and wood, and a high number of potential suppliers within the economically viable transportation radius.

(59) The Finnish NCA maintains ([45]) that, compared to the situation of the previous decision of the NCA of 2001, the situation of the geographical market does not appear to have changed, hence the geographic market can be defined as national in scope.

(60) In view of the above, for the purposes of evaluating the conditions laid down in Article 34 of Directive 2014/25/EU and without prejudice to competition law, or the application of any other Union law, Commission does not need to conclude on the precise scope of the geographic market, as in any situation, the result of the assessment of the competitive situation would be the same.

3.2.3. *Competitive assessment*

(61) It is considered that, in respect of the market for peat and wood, one indicator for the degree of competition on national markets is the total market share of the biggest three producers. This is in line with Commission precedents ([46]).

(62) The market share of the biggest three producers, in terms of values of sales was of […] ([47]) % in 2012, […] % in 2013 and […] % in 2014 ([48]). Vapo Oy is the first market player in this market, but its market shares were decreasing in the last years ([…] in 2012; […] in 2013 and […] in 2014).

(63) The analysis of the competitive situation at the level of each of the 20 largest consumers shows that Vapo market shares range between […] and […] ([49]) with two exceptions ([50]), while Vapo accounts overall for […] ([51]) of all deliveries to those 20 largest customers.

(64) The fact that the market share of Vapo in the deliveries to the largest clients is higher than the overall market share calculated at national level, may suggest that Vapo might not be able to use its market position in relation to the small customers.

([42]) Applicant's letter of 16 June 2016, p. 12.
([43]) See footnote 41.
([44]) See footnote 40.
([45]) Letter of the Finnish authorities of 26 September 2016, p. 3 and opinion of the NCA of 2 November 2011, p. 3.
([46]) Commission Implementing Decision 2011/306/EU of 20 May 2011 establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors is not applicable to the bituminous coal mining in the Czech Republic (OJ L 137, 25.5.2011, p. 55).
([47]) […] confidential information.
([48]) Request, p. 15 and 17.
([49]) Applicant's letter of 16 June 2016, p. 6.
([50]) These two exceptions are not problematic, as in one case the plant is in the same location as other plants where Vapo has low market shares, and the other one is one of the smallest plants.
([51]) Market shares based on 2014 data.

(65) Even considering hypothetically an alternative scenario where Finland is divided into four regional supply areas (north, east, west and south), the result of the assessment remains largely the same, Vapo's market shares ([52]) ranging between […] and […] ([53]).

(66) As explained in recital 50, the Applicant sells peat and wood, on the basis of framework agreements with his clients, for which the quantities to be delivered and the prices are agreed annually or at shorter intervals. The largest 20 peat-users in Finland ([54]), which are located throughout the country, are all using peat along with wood and sometimes with coal. All plants have more than one supplier of peat and wood, and the Applicant does not have any exclusive contracts.

(67) As regards switching, it can be observed that changes in plant technology, applicable taxes on peat and subsidies for wood led to a decrease in peat consumption. The Applicant lost a number of peat customers which have switched to fuels provided by other suppliers, while other customers have reduced their demand of peat from the Applicant.

(68) There have been a number of entries ([55]) into the market for peat in the last years; however this number is limited due to the decreased demand for peat.

(69) The Finnish Government promotes the use of wood fuel consumption for energy. The tax level of fuel peat was lowered, but at the same time the subsidy for wood fuels was increased, which shows the intention of the Government to keep the domestic fuel peat and wood fuel competitive against each other. Wood is already the most used source of energy; its use is increasing from 2000 onwards, while the respective share of peat is decreasing.

(70) As explained in recitals 41 to 48, the final cost to the customer, which includes fuel tax, emission allowances (for peat) and subsidies (for wood) are comparable, with wood being, on average, cheaper than peat.

(71) The Commission takes note that the current competitive pressure on peat in essentially driven by the regulatory framework in place (peat fuel tax, CO_2 emission tax, and subsidy for wood chips), and that changes to those policies may modify the market dynamics between peat and wood, their ability to compete against one another and the overall competitive pressure on Vapo.

4. **CONCLUSIONS**

(72) In respect of the production and wholesale of peat, the situation can thus be summarised as follows: the aggregate market shares of the three largest competitors are low, the customers have the possibility to switch from peat to wood and other fuels.

(73) In view of the factors examined in recitals 23 to 71, the condition of direct exposure to competition laid down in Article 34(1) of Directive 2014/25/EU should be considered to be met in respect of production and wholesale of peat in Finland.

(74) Furthermore, since the condition of unrestricted access to the market is deemed to be met, Directive 2014/25/EU should not apply when contracting entities award contracts intended to enable production and wholesale of peat to be carried out in Finland nor when they organise design contests for the pursuit of such an activity in that geographical area.

(75) This Decision is based on the legal and factual situation as of February 2016 to October 2016 as it appears from the information submitted by the Applicant and by Finnish authorities. It may be revised, should the conditions for the applicability of Article 34 of Directive 2014/25/EU be no longer met, following significant changes in the legal or factual situation.

(76) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee for Public Contracts,

([52]) Market shares based on 2013 data.
([53]) Applicant's letter of 6 April 2016, p. 13.
([54]) The 20 largest customers of peat account for 56 % of the total consumption of peat.
([55]) Applicant's letter of 16 June 2016, p. 3.

HAS ADOPTED THIS DECISION:

Article 1

Directive 2014/25/EU shall not apply to contracts awarded by contracting entities and intended to enable production and wholesale of peat to be carried out in Finland.

Article 2

This Decision is addressed to the Republic of Finland.

Done at Brussels, 23 January 2017.

For the Commission
Elżbieta BIEŃKOWSKA
Member of the Commission