DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2017/131

of 24 January 2017

amending Implementing Decision 2014/184/EU exempting certain services in the postal sector in Austria from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors

(notified under document C(2017) 259)

(Only the German text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 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 paragraphs 5 and 6 of Article 30 thereof,

After consulting the Advisory Committee for Public Contracts,

Whereas:

(1) On 1 October 2013, Österreichische Post AG (hereinafter referred to as 'Austrian Post') transmitted a request pursuant to Article 30(5) of Directive 2004/17/EC to the Commission. The request concerns certain postal services as well as certain services other than postal services, both types of services provided by Austrian Post in the territory of Austria. The services concerned are described in the request as follows:

(a) postal services for addressed letters between business customers (hereinafter referred to as 'B2B') and between business customers and private customers (hereinafter referred to as 'B2C') on a national level ('domestic' and 'inbound');

(b) postal services for addressed letters between private customers (hereinafter referred to as 'C2C') and between private customers and business customers (hereinafter referred to as 'C2B') on a national level ('domestic' and 'inbound');

(c) postal services for addressed international ('outbound') letters B2B and B2C (hereinafter referred to as 'B2X') as well as C2B and C2C (hereinafter referred to as 'C2X');

(d) postal services for addressed advertising letters on a national and international level;

(e) postal services for non-addressed advertising letters, on a national and international level;

(f) postal services for addressed and unaddressed newspapers;

(g) management services for mailrooms;

(h) value-added services linked with electronic media and provided entirely by such media;

(i) philately — special postage stamps;

(j) financial services.

([1]) OJ L 134, 30.4.2004, p. 1.

(2) On 2 April 2014, the Commission adopted Implementing Decision 2014/184/EU ([1]). By that Decision the following postal services in Austria were exempted from the public procurement rules:

(a) management services for mailroom;

(b) value-added services linked with electronic media and provided entirely by such media;

(c) philatelic services and payment services provided on its own behalf.

(3) For the rest of the services specified in the Request the Commission found that the conditions for exemption were not met, hence Directive 2004/17/EC continued to apply.

(4) On 24 June 2014, the Austrian Post filed ([2]), to the General Court of the Court of Justice, an action for the partial annulment of the Implementing Decision 2014/184/EU.

(5) On 27 April 2016, the General Court annulled Implementing Decision 2014/184/EU, in so far as it states that that Directive continues to apply to the market for postal services for B2B and B2C addressed letters on an international level in Austria. The General Court dismissed the Austrian Post action, as to its remainder.

(6) Implementing Decision 2014/184/EU should therefore be amended accordingly,

HAS DECIDED AS FOLLOWS:

Article 1

In Article 1 of Implementing Decision 2014/184/EU the following point is added:

'(e) postal services for addressed international letters B2B and B2C';

Article 2

This Decision is addressed to the Republic of Austria.

Done at Brussels, 24 January 2017.

For the Commission
Elżbieta BIEŃKOWSKA
Member of the Commission

([1]) Commission Implementing Decision 2014/184/EU of 2 April 2014 exempting certain services in the postal sector in Austria from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 101, 4.4.2014, p. 4).

([2]) Österreichische Post AG v. Commission, T-463/14, EU:T:2016:243