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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Notice concerning the date of entry into force of the Amendments to Annexes 14-A and 14-B and to Appendices 2-C-1 and 2-C-2 of the Agreement between the European Union and Japan for an Economic Partnership

The Amendments to Annexes 14-A and 14-B and to Appendices 2-C-1 and 2-C-2 to Annex 2-C of the Agreement between the European Union and Japan for an Economic Partnership ⁽¹⁾, signed in Tokyo on 17 July 2018, entered into force on 1 February 2021.

⁽¹⁾ OJ L 330, 27.12.2018, p. 3.

DECISIONS

COMMISSION DECISION (EU) 2021/104

of 24 January 2020

on SA.39182 (2017/C) (ex 2017/NN) (ex 2014/CP) – Alleged illegal aid to AS Tartu Agro

(notified under document C(2020) 252)

(Only the Estonian text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having invited interested parties to submit their comments, in accordance with the first subparagraph of Article 108(2) TFEU ⁽¹⁾,

Whereas:

1. PROCEDURE

- (1) On 27 February 2017 the Commission decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) in the above mentioned case ('the opening decision'). The opening decision was based on the complaint, which was filed against alleged unlawful State aid granted to AS Tartu Agro ('AS Tartu Agro') by the Ministry of Rural Affairs (previously by the Estonian Ministry of Agriculture) ('the Ministry') by the letter of the complainant submitted to the Commission on 24 July 2014 and registered by the Commission on 28 July 2014. The Commission forwarded the complaint to the Estonian authorities on 14 August 2014 and invited them to submit information and to comment on the allegations made by the complainant. The Estonian authorities provided the requested information on 3 October 2014.
- (2) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on interested parties to submit their comments.
- (3) On 21 April 2017 the Estonian authorities submitted their comments.
- (4) The Commission received two sets of comments from interested parties. These comments were forwarded to the Estonian authorities on 10 May 2017 (the comments of the complainant) and on 12 May 2017 (the comments of AS Tartu Agro). The Estonian authorities sent their comments on the letter of the complainant on 28 June 2018.
- (5) On 11 June 2017, the complainant submitted additional comments comprising five annexes. As three of those annexes could not be opened, the complainant re-submitted them on 19 June 2017. These comments were forwarded to the Estonian authorities on 3 July 2017. The Estonian authorities submitted their comments on 21 July 2017.

⁽¹⁾ Invitation to submit comments pursuant to Article 108(2) TFEU, State aid SA.39182 (2017/C) (ex 2017/NN) (ex 2014/CP) – Alleged illegal aid to AS Tartu Agro (OJ C 103, 1.4.2017, p. 4).

⁽²⁾ See footnote 1.

- (6) AS Tartu Agro contacted the Commission by a letter of 30 August 2017, it was replied by a letter on 11 September 2017.
- (7) The complainant contacted the Commission services by a letter on 9 January 2018, 30 January 2019 and 14 July 2019, the Commission services answered by a letter respectively on 7 February 2018, 1 March 2019 and 17 July 2019.
- (8) A teleconference with the Estonian authorities was held on 7 February 2019.
- (9) The Commission sent a request for additional information to the Estonian authorities on 15 February 2019, which the Estonian authorities answered by letter of 17 April 2019.

2. DESCRIPTION

2.1. The beneficiary

- (10) Currently AS Tartu Agro ('AS Tartu Agro', originally 'Tartu State Farm') is a private limited company, which produces milk, meat and cereals. Proceeds of sales in 2017 were EUR [...] (*) million. The output of milk was [...] tons in 2017 (contributing [...] to the proceeds of sales, namely EUR [...] million). The total output of beef was [...] tons in 2017. The production of cereals was [...] tons. AS Tartu Agro had 126 employees in 2017. The net income of AS Tartu Agro in 2017 was EUR 1,1 million.
- (11) AS Tartu Agro is the successor of a State farm established by a decision of the Estonian Supreme Council in 1992 (°), for the purpose of seed cultivation and conducting livestock related research. In 1997, the State farm was turned into the limited State company AS Tartu Agro.
- (12) In August 2001, the State decided to sell the shares of AS Tartu Agro. On 2 October 2001, AS Tartu Agro was sold to OÜ Tartland based on the outcome of a restricted tendering procedure.

2.2. The measure

- (13) According to the complainant, the Ministry has granted unlawful State aid to AS Tartu Agro through the rent of agricultural land in Tartumaa at prices which have been below the market rate since year 2000 ('the measure').
- (14) On 16 November 2000, a contract for the lease of certain plots of agricultural land was signed between the Ministry and AS Tartu Agro (recital 8 of the opening decision). The total size of the plots was 3 089,17 hectares ('ha'), located in Tähtvere municipality, in Tartu county. The owner of the land is the Republic of Estonia. OÜ Tartland took over the lease contract when it bought AS Tartu Agro in 2001.
- (15) The decision to conclude the lease contract with AS Tartu Agro was based on the result of a restricted tendering procedure. In that procedure a shortlist of pre-selected candidates was to be established based on selection criteria set out in an officially published announcement of the tender ('the announcement of the tender'). These pre-selected candidates were then eligible to negotiate the further conditions to be laid down in the lease contract ('the restricted negotiation').
- (16) The tender was published in the Official Announcements on 6 July 2000, upon request of the Ministry. The lease object was the agricultural land referred to in recital 14. The announcement of the tender set out a condition that the agricultural production activity of AS Tartu Agro should be continued. The deadline for submitting tenders was 26 July 2000.
- (17) The announcement of the tender stipulated that the participants should submit (i) an application; (ii) a receipt of paying the participation fee of Estonian kroon ('EEK') 1 000; (iii) an offer for the rental fee; and (iv) a business plan ('the selection criteria').
- (18) Two companies submitted an offer: AS Tartu Agro and Aiu Põllumajanduse OÜ.
- (19) The decision on the eligible candidates for the restricted negotiation was made on 27 July 2000. An evaluation panel assessed the submitted tenders and prepared minutes on the outcome of the assessment. According to those minutes (°), it was decided that the negotiations would be started with AS Tartu Agro and that the second tenderer – Aiu Põllumajanduse OÜ – would be excluded from the negotiations.

(*) Confidential information.

(°) Decision of the Supreme Council of the Republic of Estonia, RT 1992, 36, 475.

(°) Minutes of the evaluation panel of 27.7.2000.

- (20) According to the evaluation panel's minutes, AS Tartu Agro had submitted the documents required in the announcement of the tender (cf. recital 17). The offer for the rental fee was EEK 10 000 (ca. EUR 639) per year, respectively EEK 3,24/ha (EUR 0,20/ha). AS Tartu Agro offered also to pay the land tax of EEK 85 000 (ca. EUR 5 432) and to make investments with up to EEK 5 million (ca. EUR 320 000) per year. AS Tartu Agro offered to conclude the lease contract for a duration of 10 to 25 years.
- (21) The evaluation panel's minutes further show that the second tenderer, Aiu Põllumajanduse OÜ, had also submitted an application. However, the company board's decision to participate in the tender, as well as the registration card as a private limited company in the Estonian Central Commercial Register, were missing from the application. Further, the business plan was deemed not to fulfil certain requirements in terms of analysis and plans. The offer for rental fee was EEK 200/ha (ca. EUR 12,78/ha) per year.
- (22) It was on those grounds that it was decided to exclude Aiu Põllumajanduse OÜ and to start negotiations with AS Tartu Agro.
- (23) In view of the negotiations, AS Tartu Agro was requested to submit an explanation for the annual investment volume, including a detailed list of annual investments.

2.3. The lease contract

- (24) On 16 November 2000, a lease contract was signed between the Ministry and AS Tartu Agro for a duration of 25 years.
- (25) The rental fee was agreed to be EEK 10 000 (ca. EUR 639), corresponding to EEK 3,24/ha (EUR 0,20/ha).
- (26) According to the lease contract, AS Tartu Agro had to cover the costs of the maintenance and the improvement of the plots including (i) annual investments amounting to EEK 400 000 (ca. EUR 25 565 respectively EUR 8,28/ha) in drainage systems; (ii) expenditures for the maintenance of the land and for increasing the soil quality in total of EEK 3 981 100 (ca. EUR 254 444), including expenditures such as those for crop protection (EEK 820 000), mineral and organic fertilisers (total EEK 3 100 000), liming (EEK 20 000) and maintenance of roadsides (EEK 41 000); and (iii) payment of all taxes.
- (27) The lease contract has been modified several times in the past (recitals 24 and 25 of the opening decision). The rental fee was adapted thrice: on 14 January 2005 it was increased to EEK 80 000 (EUR 5 113), on 21 March 2007 it was increased to EEK 250 000 (EUR 15 978) and on 12 May 2009 it was increased to EEK 416 600 (EUR 26 626), EEK 136/ha (EUR 8,69/ha). The lease contract is still valid.

2.4. The expert report

- (28) As regards the rented land, the Estonian authorities submitted on 1 February 2016 a report on the outcome of an independent expert assessment of the rental prices of agricultural land in Estonia, made by a private real estate company, Uus Maa Tartu büroo OÜ ('the Uus Maa report'). The Uus Maa report assessed the 23 plots that are subject of the lease contract.
- (29) According to this report, the plots have an average soil quality compared to the quality of the soil in Estonia in general. All the plots have a direct access from the public road. The plots have no constraints (e.g. no numerous electricity posts, wet areas or areas covered by the forest) that would restrain significantly the agricultural production capacity.
- (30) The assessment used for the report was the sales comparison approach, namely a method that compares a piece of property to other properties with similar characteristics.
- (31) According to the Uus Maa report, the rental fee for agricultural land in Tartumaa ranged from EUR 6–10/ha in the period of 2000–2004. Before Estonia joined the European Union in 2004 and agricultural subsidies became available, there were few lease contracts for areas under cultivation. The existing lease contracts were predominantly worded in general language, and specific nuances were usually not added to the terms and conditions. The contracts were generally signed for up to five years and did not stipulate any annual increase in the rent. No rent was paid for peat land, polder land and floodplain land (known as 'other land'); they were not properties for the lease market.

- (32) In the period 2005–2009, the annual rental fee for agricultural land in Tartumaa increased to EUR 10–20/ha. The lease contracts started to include clauses regarding the maintenance of the parcel like maintenance of the drainage systems. However, the use of fertilisers, liming and maintenance of roadsides were not regulated by the lease contracts as in general the activities belong to the responsibilities of the lessee and are part of his production activity. The general duration of the lease contracts was set at 5 years. During this period, contracts generally did not stipulate a coefficient for rent increases and no rent was paid on other land.
- (33) In the period 2010–2014, the annual rental prices increased further, ranging from EUR 25–60/ha. The lease contracts started to provide for an automatic annual increase of 5 % of the rental fee. They also included clauses regulating the use of the land in order to preserve the quality of the soil, such as the fulfilment of agro technical requirements etc. The general duration of the lease contracts was set at 5 years. A lease market had also arisen for other land, commanding an annual rent of approximately EUR 10/ha.
- (34) Further, the Uus Maa report includes an assessment of the other obligations like the payment of taxes, the maintenance and the improvement of the plots (cf. recital 26) imposed on AS Tartu Agro under the lease contract. According to the report, lease contracts from the early 2000s were quite rudimentary and expressed in general language. They covered only price and payment terms and no specific obligations were imposed on lessees.
- (35) Later (predominantly from 2005 onwards), the obligation to pay property tax and other taxes related to rent by a lessee was added to lease contracts. The maintenance of the drainage systems and of roadsides (running maintenance) have for self-evident reasons been included in the contracts as the obligation of the lessee as user and beneficiary.
- (36) According to the Uus Maa report, a construction of a new drainage system is an investment into the owner's assets. Such an investment means a significant charge in addition to paying rent and is therefore usually specified separately in the lease contracts. In 2010–2011, provisions on designated use of land and agronomical prudent conduct began to be added to lease contracts. Such provisions are not worded in monetary terms but in general language and each lessee decides how to implement them, depending on the type of crop being grown and the location and nature of the land being leased.
- (37) The Uus Maa report thus concludes that it was not customary to add to lease contracts obligations such as those imposed on AS Tartu Agro, namely provisions on investments in maintenance systems, or improvements of the land in form of the amount of the expenditures in crop protection and/or mineral and organic fertilisers, in a monetarily measurable form. Otherwise, the Uus Maa report does not address the lease contract between AS Tartu Agro and the Ministry in terms of its length and the number of hectares leased out, apart from stating that it was important to preserve the use of the land for the designated purpose, in particular with regard to soil fertility, considering the long duration of the contract.
- (38) Finally, the Uus Maa report concludes that the liquidity of the asset can be deemed to be high, considering the location, size and condition of the land, but points out that the assessment result is of medium accuracy and that the actual market rent can vary $\pm$ 20 % from the one referred to in the Uus Maa report (cf. recitals 29–37).

2.5. Other sources of market prices

- (39) On 17 April 2019, the Estonian authorities submitted statistical data of the Statistics Estonia ('the Statistical Office') on the market prices of rental fees of agricultural land. Since 2009, the Statistical Office has been publishing rental fees of agricultural land. The Statistical Office is a public body that collects and publishes national statistics, inter alia, the rental prices per hectare of utilised agricultural area. The statistical methodology used by the Statistical Office for the rental fees of agricultural land relies on a methodology agreed by Eurostat ⁽⁹⁾. The rental fees presented below are statistical averages.

⁽⁹⁾ https://ec.europa.eu/eurostat/cache/metadata/en/apri_lpr_esms.htm

Table

The rental fee for agricultural land (EUR/ha)

County	Type of land	2009	2010	2011	2012	2013	2014	2015	2016	2017
Total Estonia	Total agricultural	21	25	26	35	40	48	52	52	58
	Arable					43	50	55	54	60
	Permanent grassland					30	38	38	40	47
Tartu	Total agricultural					50	56	63	61	
county	Arable					52	58	65	61	
	Permanent grassland					39	44	45	62	

Source: www.stat.ee

2.6. Grounds for initiating the procedure

- (40) In its opening decision, the Commission could not exclude that the measure under assessment might involve State aid within the meaning of Article 107(1) TFEU. More specifically, the Commission raised doubts as to whether the rental fee paid by AS Tartu Agro was below the market price, thereby providing an economic advantage to that company.
- (41) To examine the question whether the economic transaction carried out by a public body confers an advantage on its counterpart, it must be assessed whether the transaction was carried out in line with normal market conditions. In this context, if a lease of assets is carried out following an open, transparent, non-discriminatory and unconditional tender procedure in line with the principles of public procurement ⁽⁶⁾, it can in general be presumed that it is in line with market conditions. The Commission could not in the opening decision conclude that the tendering procedure was transparent, non-discriminatory or unconditional (cf. recital 58 of the opening decision). Further, the independent Uus Maa report submitted by the Estonian authorities seemed to indicate that the rental fee paid by AS Tartu Agro was below market prices. Therefore, it could not be excluded that an advantage might have been granted in favour of AS Tartu Agro.
- (42) Further, the advantage seemed to be selective given that the land leased concerned one single undertaking, namely AS Tartu Agro. The other elements of Article 107(1) TFEU, namely use of State resources, aid to an undertaking, distortion of competition and effect on trade also seemed to be fulfilled (cf. recitals 43–45 and 65–67 of the opening decision).
- (43) The Commission also questioned whether the measure could be declared compatible, as State aid in the form of unduly low land rental fees constitutes operating aid in that it reduces the normal operating costs of the beneficiary. Operating aid is deemed to be *prima facie* incompatible with the internal market, in particular under Article 107(3) (c) TFEU ⁽⁷⁾.

3. COMMENTS OF ESTONIA

- (44) Estonia considers that the lease of the agricultural land to AS Tartu Agro does not involve State aid within the meaning of Article 107(1) TFEU.
- (45) Estonia contests the assumption that the tendering procedure might not have been transparent, non-discriminatory and unconditional.

⁽⁶⁾ Judgment of the Court of Justice of 7 December 2000, *Telaustria*, C-324/98, ECLI:EU:C:2000:669, paragraph 62; Judgment of the Court of Justice of 3 December 2001, *Bent Moustén Vestergaard*, C-59/00, ECLI:EU:C:2001:654, paragraph 20. See also Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (OJ C 179, 1.8.2006, p. 2).

⁽⁷⁾ Case C-156/98 *Germany v Commission*, ECLI:EU:C:2000:467, paragraph 30, Joined Cases C-71/09 P, C-73/09 P and C-76/09 P *Comitato 'Venezia vuole vivere' v Commission*, ECLI:EU:C:2011:368, paragraph 136, and Case T-459/93 *Siemens v Commission*, EU:T:1995:100, paragraph 48.

- (46) Firstly, the national law as it stood at the time when the contract was signed was respected during the tender procedure. The process of leasing State-owned land was regulated by the State Assets Act ⁽⁸⁾ (Riigivaraeasus) and carried out in accordance with the Government of the Republic Regulation No 285 of 1 August 1995 approving the rules for granting the use of State assets (Riigivara kasutusse andmise korra kinnitamine) ⁽⁹⁾ ('the Rules').
- (47) As regards transparency and non-discrimination, the Estonian authorities explain that Aiu Põllumajanduse OÜ was excluded from the negotiation because it did not meet the requirements set out in the announcement of the tender (cf. recitals 21–22). Specifically, its application contained neither a decision by its board to participate in the tender, nor the company's registration card from the commercial register, which would have demonstrated its legal capacity. The fact that it was mandatory to present those documents was clear from paragraphs 32 and 55 of the Rules. The documents are necessary in order to enable the authority conducting the tender to be certain that the undertaking actually exists and that the person submitting the tender is authorised to represent the legal entity.
- (48) Aiu Põllumajanduse OÜ did not submit that information and it was therefore mandatory for the Ministry to exclude that company from the tender, according to paragraph 33 of the Rules. Therefore, according to the Estonian authorities, there was no discrimination and no lack of transparency in the tender procedure.
- (49) As regards the business plan, the Estonian authorities explain that there were no specific requirements in place in 2000 but that it is normal that a business plan includes parts describing a business idea, resources, financial forecasts (including a cost-benefit analysis), a risk assessment, etc.. The aim of requiring a business plan was to be able to assess the tenderer's vision and possibilities for using the agricultural land, including storing the national seed reserve and propagating high-yielding varieties of seed in accordance with OECD standards on the basis of the financial forecasts provided.
- (50) According to the Estonian authorities, AS Tartu Agro's business plan contained the information required for the decisions to be taken. It set out the undertaking's strategic objectives and the conditions necessary for those objectives to be achieved, information on the undertaking's financial position and staff, detailed project descriptions, marketing principles, financial forecasts and a risk assessment.
- (51) The business plan of Aiu Põllumajanduse OÜ contained no explanations as to how the undertaking's vision would be realised. The evaluation committee's report states the following: 'The business plan submitted does not meet the requirements; it includes no analysis or planning whatsoever. The rent offered is EEK 200/ha, but it is unclear how payment of the rent will be guaranteed.' The Estonian authorities therefore found that there was no certainty that Aiu Põllumajanduse OÜ's financial position, experience and capacity would have allowed it to pay the rent it was offering for the full duration of the lease contract. Similarly, there was no clear understanding of how Aiu Põllumajanduse OÜ could guarantee that the requirements set out in the announcement of the tender would be met.
- (52) As regards the question of whether the tender was unconditional, the Estonian authorities state that the decision to impose an additional requirement in the tender, that required the agricultural production activity of AS Tartu Agro to continue, was not conditional. The aim of setting out this condition in the tender procedure notice was not for the activities of AS Tartu Agro as a company, but was instead linked to its agricultural production, namely the need and the obligation to propagate particular high-yielding varieties of seed, which meet OECD standards, and to store them for the national seed reserve. Consequently, according to the Estonian authorities, there was an objective justification for the requirement.
- (53) Further, according to the Estonian authorities, the requirement to propagate and store seeds was objective and allowed all interested parties to participate in the tender. No specific method was prescribed for the participants in the tender. On the contrary, the aim was to ensure that as broad a range of agricultural undertakings as possible could participate in the tender. Thus, the Ministry did not set any time or space limitations for meeting the requirement to continue the agricultural production and each party interested in participating in the tender had the opportunity to decide for itself how to fulfil the obligation to propagate and store the seed varieties in question.

⁽⁸⁾ State Assets Act, RT I 1995, 22, 327.

⁽⁹⁾ Government of the Republic Regulation No 285 of 1 August 1995 approving the rules for granting the use of state assets, RT I 1995, 65, 1091.

- (54) Originally, this requirement of propagation of seeds, which meet OECD standards, and of storage of them for the national seed reserve, was introduced on the basis of Order No 55 of the Minister for Agriculture of 30 April 1997. This Order imposed the propagation and storage of the seeds on the predecessor of AS Tartu Agro – Tartu State Farm.
- (55) Based on the above, the Estonian authorities consider that the tender procedure was carried out in a transparent, non-discriminatory and unconditional manner.
- (56) The Estonian authorities further argue that the value of the lease fee corresponded to the market value, for the following reasons. Firstly, the quality of the land has not been taken into account correctly in the opening decision, because at least 12,34 % of the leased land is unsuitable for agricultural production. More precisely, a total of 377,92 ha consists of (i) 42,4 ha of forest land; (ii) 260,5 ha consists of permanent grassland (namely the Emajõgi floodplain (natural grassland); and (iii) 75,02 ha consists of roads, paths and ditches between cadastral units. There are also roads, paths and ditches inside the cadastral units, the total area of which has not been surveyed.
- (57) Secondly, the agricultural producers in Estonia at the time of the tender were characterised by very low economic capacity. According to information from 2001, the average size of an agricultural holding was 15,6 ha. In total, there were 24 holdings of more than 2 000 ha in size, of which only 8 were comparable to the subject of the tender in having a utilised agricultural area exceeding 3 000 ha. As a result, there was only a very limited number of agricultural producers who were interested in leasing more than 3 000 ha of agricultural land to be used for designated purposes and who were prepared to take the risk and had the capacity to do so.
- (58) Thirdly, the non-existent lease market also put limits on the possible lease fee. At the time when the lease contract was signed, land was generally given for use free of charge to prevent it from being abandoned. For this reason, the Ministry had to be both reasonable and flexible when setting out its demands.
- (59) Fourthly, the Estonian authorities argue that all expenditure made by AS Tartu Agro (as set out in recital 26) should be considered as a rental income for the Ministry.
- (60) In that regard, the Estonian authorities stress that the investments in the drainage system are not a matter of choice but are imposed by the lease contract and by the law. According to Section 16(1) of the Land Improvement Act (Maaparandusseadus) ⁽¹⁰⁾ in force at the time, the maintenance of a land improvement system was an obligation for the owner of the land, which in this case was the State. However, according to the lease contract, AS Tartu Agro had the obligation to keep the essential parts and accessories of the leased land in a condition corresponding to proper management and to replace them, if necessary, without being entitled to request reimbursement from the State for the costs of those investments. The Estonian authorities argue in that regard that it would have been in the interests of any private investor operating in any market conditions to pass on those obligations and that risk to the lessee.
- (61) The Estonian authorities argue, based on those grounds, that these investments in the drainage system should be considered as part of the rental income for the Ministry, in addition to the rent payable under the contract, and should be taken into account when assessing whether the lease contract is in line with market conditions.
- (62) As regards the expenditures for the maintenance of the land and for increasing soil quality, the Estonian authorities argue that these were essential to ensure that the agricultural land would remain usable for a longer period. Without such spending, the quality of the leased agricultural land and its value in economic terms would have dropped. The fact that the spending by AS Tartu Agro to improve the balance of nutrients in the soil resulted in soil fertility stabilising is confirmed by the Agricultural Research Centre. It was thus both profitable and necessary for the State to conclude the lease contract in this form. The lessee's obligations meant that the State did not have to bear the costs itself but could pass them on to AS Tartu Agro on top of the rent fee.
- (63) As regards the payment of taxes, pursuant to Sections 3 and 10 of the Land Tax Act ⁽¹¹⁾ (Maamaksuseadus), land tax is to be paid by the owner or user of the land. The user of the land should pay the tax if the land has not been re-registered in accordance with the procedure laid down in the Land Reform Act (Maareformi seadus). In accordance with those provisions of the law, the commitment to pay the land tax relied on the Estonian State.

⁽¹⁰⁾ Land Improvement Act RT I 1994, 34, 534, <https://www.riigiteataja.ee/akt/24638>

⁽¹¹⁾ Land Tax Act, RT I 1996, 41, 797.

- (64) The Estonian authorities are therefore of the opinion that the rental fee together with the size of the other financial obligations was in line with market conditions, as they were at least comparable to, or higher, than a rental fee for the market in question.
- (65) According to the Estonian authorities, the Ministry wished to earn the maximum revenue possible from leasing the land.
- (66) The Estonian authorities also consider that the choice of signing the contract with AS Tartu Agro, following the completion of the tender, was not selective as the selection of AS Tartu Agro was carried out in a transparent, non-discriminatory and unconditional manner. The State acted logically in this selection procedure, with due care, and in accordance with the national legislation that was in force at the time the tender procedure was conducted. Similarly, the Estonian authorities do not agree to the assessment of the Commission in the opening decision that the measure is liable to distort competition and affect trade between Member States. The Estonian authorities argue that the Commission has not explained the impact of the lease contract or how it specifically distorts competition. Thus it cannot be ruled out that the possibility of the lease contract distorting competition and affecting trade between Member States is merely hypothetical.
- (67) Finally, the Estonian authorities argue that, even if the Commission takes the view that the conditions referred to in Article 107(1) TFEU are met, there can be no claims concerning actions or transactions relating to State aid before the registering of the complaint on 28 July 2014.

4. COMMENTS OF INTERESTED PARTIES

Comments of AS Tartu Agro

- (68) AS Tartu Agro argues that it did not receive illegal State aid from the Estonian government in 2000 since it considers having received no economic advantage at any time under the lease contract.
- (69) According to AS Tartu Agro, the lease contract was entered into through a competitive, transparent, non-discriminatory and unconditional tender procedure, in accordance with the legislation in force at the time of signature, for the following reasons.
- (70) The documents required for the participation in the tender were specified in paragraph 32 of the Rules.
- (71) As regards the question of whether the tender was unconditional, AS Tartu Agro refers to the importance of ensuring that the company had means of production, in the form of agricultural land, before the sale of its shares in 2001 (cf. recital 12). Otherwise, no one would have desired to acquire the shares of AS Tartu Agro, meaning that their value would have fallen to zero. If so, the State would not have been a private investor acting in accordance with market economy principles. Therefore, to effect the sale of the shares and to also obtain the highest possible price for them, the leasing of the land had to be combined with the condition of continuing the agricultural activities of AS Tartu Agro. According to AS Tartu Agro, this condition was laid down in a sufficiently open-ended form in the tender, enabling all bidders to offer their own vision of how to fulfil it.
- (72) Further, AS Tartu Agro explains that the company was strategically important to the Estonian government, as it had been designated as a seed centre and as a training and testing ground for the Ministry. In this context, on 13 October 1997, the Seed Scheme Council of OECD took the decision to accept Estonia to the OECD seed schemes, and AS Tartu Agro was included in the OECD seed cultivation system. Therefore AS Tartu Agro had a significant role to play as a seed centre by ensuring the propagation of certified seeds and preserving the national seed reserve.
- (73) AS Tartu Agro also acts as a training and testing ground for the Estonian University of Life Sciences in the areas of veterinary medicine, animal husbandry, animal genetics, animal breeding and plant protection cooperation. Therefore, AS Tartu Agro was (and still is) valuable to the Estonian government for the implementation of educational objectives.
- (74) Based on the above, AS Tartu Agro considers that it received no advantage by entering into the lease contract.
- (75) Further, AS Tartu Agro claims that the lease contract meets the market conditions for the following reasons.

- (76) AS Tartu Agro argues that the parties to a lease contract cannot amend or withdraw from the contract unilaterally, even if the market conditions change during the contract's period of validity. This is due to the Estonian contract law (Section 8(2) of the Law of Obligations Act ⁽¹²⁾), which states that contracts are binding on the parties. Therefore, the parties to the contract are unable to continually adapt a long-term contract to market conditions.
- (77) AS Tartu Agro further argues that the rental fee and the lessee's additional obligations (cf. recitals 25 and 26) are mutually and inseparably connected and must be seen as one combined actual rental income. The State acted as a prudent owner when imposing the obligation to make investments to preserve the value of the leased land and its soil fertility. According to AS Tartu Agro, the State did so to ensure a long term increase in land value, which this shows that it acted in accordance with the market economy investor principle.
- (78) As regards the annual investments in the drainage system, AS Tartu Agro invested a total of EUR 1 458 611 in land improvements in the first 16 years of the contract, namely an average of EUR 91 163 per year. This is 3,57 times more than what is required in the lease contract.
- (79) The obligation of making investments of at least EEK 400 000 (EUR 25 565) a year in the renewal (namely not merely maintenance) of land improvement systems was imposed on the lessee at a time when such obligations were not common, as can be seen in the Uus Maa report. Therefore, this was a significant obligation for the lessee in addition to the rental fee. For the State it was a clearly beneficial and important obligation and therefore unavoidably connected with the lease fee.
- (80) As regards the lessee's expenditures for maintenance of the land and for increasing its soil quality, AS Tartu Agro argues that those obligations were important for the State when leasing out land over a longer period. Although the improvement in soil fertility is in the interests of the lessee, it also benefits the State in the sense that it increases the land value, as confirmed by the Agricultural Research Centre. For AS Tartu Agro, the obligations generated an expenditure of EEK 3 981 000 (EUR 254 432) per year.
- (81) According to AS Tartu Agro, data collected by the Farm Accountancy Data Network show that the specific costs for crop production per hectare in Estonia were on average EUR 43,42/ha in year 2000. For dairy producers of a comparable size to AS Tartu Agro, the costs were on average EUR 28,57/ha. In the lease contract, however, the volume of costs for improving soil fertility was at least EUR 82,36/ha, which is significantly higher than the Estonian average for that period.
- (82) On the taxes, under Section 8(1) of the Land Tax Act ⁽¹³⁾, land tax should be paid by the land owner, unless the owner and the lessee have agreed otherwise.
- (83) In the case at hand, it was agreed that AS Tartu Agro should pay the land tax and any other taxes connected with the object of the lease contract. According to AS Tartu Agro, the land owner's legal obligation to pay land tax thus became an additional obligation for the lessee. The tax payment must therefore be taken into account when assessing the size of the lease fee.
- (84) AS Tartu Agro further claims that a significant amount of the leased land cannot be used for agricultural production and refers in that regard to the Uus Maa report, according to which only 2 833,596 ha of that land is arable land. The remainder consists of 116,58 ha of natural grassland, 44,06 ha of forest, 0,3 ha of calm traffic area and 76,3348 ha of other land (for instance roads and ditches and submerged land). Another roughly 283 ha of the arable land is made up of permanent grassland, which cannot be used for agricultural production and for which no agricultural support is paid to AS Tartu Agro, but which current legislation requires to be preserved as permanent grassland. Therefore only 2 550,596 ha of the 3 061,9 ha leased land, namely 83,3 %, can be used for its intended purpose. The remaining 16,7 % cannot be used for agricultural production. AS Tartu Agro argues, on that basis, that the actual rental fee per hectare is 16,7 % higher than the contractual rental fee.

⁽¹²⁾ Law of Obligations Act, RT I, 31.12.2016, 7, available: <https://www.riigiteataja.ee/akt/võs>

⁽¹³⁾ Land Tax Act, RT I, 10.11.2016, 10, available here: www.riigiteataja.ee/akt/110112016010

- (85) Further, the net rental fee laid down in the lease contract has been increased by more than 100-fold over the first 16 years of the contract (from EUR 0,21/ha to EUR 27,24/ha), whereas the Uus Maa report indicates that the market price has increased at a (ten-fold) slower rate. AS Tartu Agro also claims that it is not correct to compare this contract with lease contracts that are of smaller magnitude and shorter in duration, as the motives of the lessee and the lessor, and therefore also the balance of contractual obligations in such contracts, differ significantly from those of the disputed lease contract.

Comments of the complainant

- (86) As regards the tender procedures, the complainant draws attention to the fact that the terms and conditions of the tender did not mention any obligations such as the payment of the land tax, annual investments in drainage system and expenditures for the maintenance of the land and for increasing the soil quality ('the other obligations').
- (87) As regards the expenditures relating to the obligations to maintain land and to increase soil quality, the complainant claims that the Ministry has acknowledged that it did not verify AS Tartu Agro's fulfilment of those obligations. Therefore, the Ministry is unable to present any document to show that this expenditure is not included in the rental fee. In general, the complainant is of the opinion that the other obligations should not be taken into account when assessing the size of the rental fee.
- (88) As regards the size of the plot, the complainant states that, based on the data from the Land Board's Geoportal, the precise size of the object of the lease contract was 3 053,59 hectares in 2016. The difference from the area specified in the lease contract arises from the fact that the Ministry has in recent years re-parcelled and re-registered some registered plots, but those changes have not yet been entered in the lease contract). Of this, 2 831,55 ha is pure arable land (92,73 %) and 1 033,00 hectares is managed natural grasslands (3,38 %). Only one plot of 26,60 ha is directly excluded from agricultural use because it is indeed 90 % forested. The complainant mentions that the Ministry has also given AS Tartu Agro an annual lumber permit for the management of that forest.
- (89) Further, only 3,02 % of the object of the lease contract is 'other land'. This designation covers all connecting roads and roadsides, ditch-sides, uncultivated edges of fields, green areas and rock piles within fields, bridges, dykes, rainwater culverts, marshy areas, etc. AS Tartu Agro has also permitted its employees to use the edge of one plot as an area for allotments and greenhouses. Therefore the total economically usable agricultural land on the object of the lease contract covers an area of 2 934,85 ha (96,11 %). The complainant contests, on those grounds, the Ministry's position that as much as 12 % of the object of the lease is excluded from agricultural use.
- (90) Further, data from the Estonian Agricultural Registers and Information Board (ARIB) web map ⁽¹⁴⁾ show that AS Tartu Agro has applied for EU agricultural support for an area of 2 900,81 ha, representing 95,00 % of the object of the lease. The applications concern single area payments, payments for agricultural practices beneficial for the climate and the environment and support for environmentally friendly production.
- (91) According to the complainant, AS Tartu Agro also received other additional income from the land. The information that the complainant has obtained from the Ministry shows that lumber permits for roughly 5 000 m³ of timber (birch, spruce, pine, aspen and alder) were granted to AS Tartu Agro in the years 2000–2015. The data of the Private Forest Centre ⁽¹⁵⁾ (SA Erametsakeskus) reveal that the market price of lumber in Estonia has fluctuated as follows in the years 2004–2016: birch, pine and spruce logs between 58 and 83 EUR/m³, alder and aspen logs between 29 and 46 EUR/m³, and wood for heating between 16 and 31 EUR/m³. In the past three years the State Forest Management Centre ⁽¹⁶⁾ has sold lumber from its forests at an average price of 42–46 EUR/m³. Based on this information, the complainant deems that AS Tartu Agro has received lumber revenues of between EUR 210 000 and 230 000 in the years 2000 to 2016.
- (92) Further, the complainant also refers to data from the Land Board, according to which the actual lease prices are higher than the lease prices stated in the Uus Maa report in the sense that the average rental fee for land was ca EUR 200/ha in Tartu County in 2015 ⁽¹⁷⁾.

⁽¹⁴⁾ See also: <https://kls.pria.ee/kaart/>

⁽¹⁵⁾ See <http://www.eramets.ee/metsa-ja-puidumuuk/hinnainfo-2/>

⁽¹⁶⁾ See <http://rmk.ee/organisatsioon/aastaaruanded>

⁽¹⁷⁾ See also: <https://www.maaamet.ee/et/uudised/moodunud-aastal-solmitud-rendilepingute-aastatasu-kokku-402-572-eurot>

- (93) Further, the complainant draws the attention to the fact that, at the moment of the tender procedures, AS Tartu Agro was a legal person in private law that was 100 % State-owned, whereas the object of the lease contract – the agricultural land – also belonged to the State. The Ministry was designated as the authority to dispose both properties, which means that both 100 % of the shares of AS Tartu Agro and the land that constituted the object of the lease contract were on the balance sheet of the Ministry. Therefore, the Ministry essentially held the tender negotiations with itself. The complainant adds that the business plan submitted to the tender by AS Tartu Agro reveals that the company considered the greatest risk to be connected to the main means of production – the land. If the land would fall into the hands of another owner or lessee, it would be impossible for the company to continue its agricultural production activities. According to the complainant, this explains why the tender contained a condition requiring the continuation of the agricultural production of AS Tartu Agro. Essentially, the objective of the tender was to enter into a lease contract with that company.

Comments of the Estonian authorities

- (94) The Estonian authorities state that they do not agree with any of the arguments of the complainant.
- (95) As regards the expenditures for the maintenance of the land and for increasing the soil quality, the Estonian authorities state that, contrary to what the complainant claims, those expenditures should be added to the rental fee. Firstly, the Estonian authorities rebut the argument that these additional requirements were originally not listed in the announcement of the tender. This was done on purpose to allow the potential tenderers to provide different offers for the payment of the rental fee.
- (96) Secondly, the lessee's maintenance of assets was required by the lease law (Rendiseadus Section 10(1)) in force at the time of the conclusion of the lease contract. In this case, the land needed investment in 2000, including the improvement of soil fertility.
- (97) Further, the Estonian authorities state that the lessee's obligations are verified by the administrative bodies operating under the supervision of the Ministry. The Estonian authorities also state that the execution of the lease is not relevant for the assessment of the content of the lease contract.
- (98) As regards the information submitted by the complainant that the actual lease prices are higher than stated in the Uus Maa report, the Estonian authorities state that it is not relevant. The Land Board started to gather information on the land lease contracts only from 2005 onwards and the lease contract in question was signed in 2000.
- (99) As regards additional income from the land in the form of selling forest, the Estonian authorities state that the statement of the complainant is erroneous, since the issuance of lumber permits cannot be equated with the average selling prices of timber and sales revenue cannot be equated to the profit. Further, the Estonian authorities claim that it is irrelevant in establishing the existence of State aid that AS Tartu Agro had the possibility to earn income from the sale of timber from the object of the lease.
- (100) Further, the Estonian authorities explain that the lease fee has been increased several times since 2000 and reflects the market price.

5. ASSESSMENT

5.1. Existence of aid – Application of Article 107(1) TFEU

- (101) According to Article 107(1) TFEU, '[s]ave as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.
- (102) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.

State resources

- (103) The State, for the purpose of Article 107(1) TFEU covers all bodies of the State administration, from the central government to the administrative level. The land in question is owned by the State (cf. recital 14) and leased by the Ministry. Therefore, any discount on the rental fee constitutes a transfer of State resources and the lease contract is imputable to the State.

Undertaking

- (104) In order to constitute State aid within the meaning of Article 107(1) TFEU, the measure must confer an advantage upon an undertaking. Undertakings are entities engaged in an economic activity regardless of their legal status and the way they are financed. The fact that AS Tartu Agro was at the time of the tender procedures a public limitedState company is irrelevant as the Union legal order is neutral with regard to the system of property ownership ⁽¹⁸⁾.
- (105) Economic activities are activities consisting of offering goods or services on the market. The alleged beneficiary of the measure is AS Tartu Agro. The company is producing and selling agricultural products (cf. recital 10) and is therefore an undertaking within the meaning of Article 107(1) TFEU.

Advantage

- (106) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention ⁽¹⁹⁾. In order to constitute aid, the measure must confer on the beneficiary advantages that relieve it of charges that would normally be borne from its budget. If the transaction was carried out under favourable terms, in the sense that AS Tartu Agro was paying a rental price below market price, the company has received an advantage within the meaning of Article 107(1) TFEU.
- (107) To examine the question whether the economic transaction carried out by a public body confers an advantage on its counterpart, it must be assessed whether the transaction was carried out in line with normal market conditions ⁽²⁰⁾. The Union Courts have developed the '*market economy investor principle*' to identify the presence of State aid in cases of public investment. Similarly, the Union Courts have developed the '*private vendor test*' to assess whether a sale or comparable transaction carried out by a public body involves State aid, considering whether a private vendor, under normal market conditions, could have obtained the same or a better price ⁽²¹⁾.
- (108) If the sale and purchase of assets, goods and services or other comparable transactions like lease of assets are carried out following an open, transparent, non-discriminatory and unconditional tender procedure in line with the principles of the TFEU on public procurement ⁽²²⁾, it can in general be presumed that those transactions are in line with market conditions, provided that the appropriate criteria for selecting the buyer, the seller or the lessee have been used ⁽²³⁾.
- (109) In the opening decision, the Commission raised doubts as to whether the tendering procedure used for leasing the land was transparent, non-discriminatory and unconditional. The Commission assessed the tender based on the announcement of the tender, the minutes of the evaluation panel and the submitted comments. The actual submissions of the tenderers are not available.
- (110) The procedure has to be transparent to allow all interested tenderers to be equally and duly informed at each stage of the tender procedure. Accessibility of information, sufficient time for interested tenderers and clarity of the selection and award criteria are all crucial elements for a transparent selection procedure.

⁽¹⁸⁾ Article 345 TFEU provides that 'The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership'.

⁽¹⁹⁾ Judgment of the Court of Justice of 11 July 1996, *SFEI and Others*, C-39/94, ECLI:EU:C:1996:285, paragraph 60; Judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

⁽²⁰⁾ Judgment of the Court of Justice of 11 July 1996, *SFEI and Others*, C-39/94, ECLI:EU:C:1996:285, paragraphs 60 and 61.

⁽²¹⁾ Judgment of the General Court of 28 February 2012, *Land Burgenland and Austria v Commission*, Joined Cases T-268/08 and T-281/08, ECLI:EU:T:2012:90.

⁽²²⁾ Judgment of the Court of Justice of 7 December 2000, *Telaustria*, C-324/98, ECLI:EU:C:2000:669, paragraph 62; Judgment of the Court of Justice of 3 December 2001, *Bent Moustén Vestergaard*, C-59/00, ECLI:EU:C:2001:654, paragraph 20. See also Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (OJ C 179, 1.8.2006, p. 2).

⁽²³⁾ Point 89 of Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU ('the Notice on the notion of State aid') (OJ C 262, 19.7.2016, p. 1).

- (111) Firstly, the Commission agrees with the description of the Estonian authorities, that the tender procedure was carried out in accordance with the Rules applicable at the time the contract was signed (cf. recital 46). The Rules specified which documents to submit in order to be an eligible candidate for the bidding process.
- (112) Those documents were, according to the announcement of the tender: (i) an application; (ii) a receipt of paying the participation fee of EEK 1 000; (iii) an offer for the rental fee; and (iv) a business plan (cf. recital 17). In addition, paragraph 32 of the Rules specifies that the following information should be submitted with the tender: (1) the name and the place of establishment of the potential tenderer; (2) consent to the conditions of the tender procedure; (3) evidence of advance payment and payment of enrolment fees; (4) the lease fee written in numbers and in word; (5) the signature of the person submitting the tender or, in the case of a representative of the natural or legal person, the proof of representation. The above requirements were publicly available through the publication of the tender in the Official Announcements and through the law that was applicable at the time when the tender took place. Therefore, the potential tenderers had equal access to the necessary information about the selection criteria.
- (113) The tenderers had sufficient time to submit their tender as they had 20 days to do so after the publication of the tender in the Official Announcements (cf. recital 16).
- (114) As regards the award criteria, paragraph 19(5) of the State Assets Act specified that in the case of the restricted tendering procedure as described in recital 15, a contract is awarded to a tenderer whose bid is considered to be the best of all bidders, taking into account both the price offered and the additional conditions imposed. Therefore, in general the candidate offering a highest rental fee should be awarded the lease contract. However, in the present tender there was an additional condition that the agricultural production activity of AS Tartu Agro should be continued. As described in recitals 123–130, it is not clear how this condition would be taken into account in the assessment of the award criteria. Based on the above, the Commission finds that the award criteria were not clear.
- (115) Based above the Commission thus concludes that the tender procedure was not transparent.
- (116) Non-discriminatory treatment of all bidders at all stages of the procedure and objective selection and award criteria specified in advance of the process are indispensable conditions for ensuring that the resulting transaction is in line with market conditions. To guarantee equal treatment, the criteria for the award of the contract should enable tenderers to be compared and assessed objectively.
- (117) As described in recital 112 the selection criteria was described in the announcement of the tender and in paragraph 32 of the Rules, therefore the Commission can conclude that the selection criteria was specified in advance of the tendering procedure and was sufficiently objective.
- (118) As regards the award criteria, similarly to the analysis of recital 114, the Commission can not conclude that the additional condition that the agricultural production activity of AS Tartu Agro should be continued, was objective. It is not clearly described what it is expected from the potential tenderers and seems to favour one undertaking.
- (119) As regards the exclusion of one of the tenderers from the tender procedure, according to the information submitted by the Estonian authorities, the exclusion of Aiu Põllumajanduse OÜ from the tender was based on the fact that certain elements were lacking in the application and in the business plan submitted by that company.
- (120) The Estonian authorities have shown that it was clear from the Rules that the tenderers had to submit a complete application in order to be an eligible bidder (cf. recital 112). According to the evaluation panel's minutes, the company board's decision to participate in the tender, as well the registration card as a private limited company in the Estonian Central Commercial Register, were missing from the application of Aiu Põllumajanduse OÜ. The Ministry thus had a legal obligation to exclude Aiu Põllumajanduse OÜ from the tender (cf. recital 48).
- (121) The Estonian authorities have also explained that a complete business plan is necessary for the assessment of the bidder's vision and possibilities for using the agricultural land. According to the evaluation committee's report, the business plan submitted by Aiu Põllumajanduse OÜ did not include any analysis or planning according to the Minutes of the evaluation panel. Further, it was unclear how the payment of the offered rent (EEK 200/ha) would be guaranteed (cf. recital 51). Based above, the exclusion of Aiu Põllumajanduse OÜ was not discriminatory based on the selection criteria as the company board's decision to participate in the tender, as well the registration card as a private limited company in the Estonian Central Commercial Register, were missing from the application.

- (122) However, as regards the tender procedure in general, based on the assessment of the award criteria below, the tender procedure was discriminatory because it guaranteed the future operation of one of the participants in the tender.
- (123) As regards the conditionality of the tender procedure, a tender is unconditional when a potential buyer is generally free to acquire the assets, goods or services to be sold and to use them for its own purposes irrespective of whether or not it runs certain businesses. If there is a condition that the buyer is to assume special obligations for the benefit of the public authorities or in the general public interest, which a private seller would not have demanded – other than those arising from general domestic law or a decision of the planning authorities – the tender cannot be considered unconditional ⁽²⁴⁾.
- (124) It is established that the announcement of the tender set out a specific condition that required the agricultural production activity of AS Tartu Agro to continue (cf. recital 16). According to the Estonian authorities, the aim of that condition was not for the activities of AS Tartu Agro as a company to continue but was linked to its specific agricultural production. Namely, the Ministry wished to ensure the propagation of particular high-yielding varieties of seed meeting OECD standards and the storing of the necessary national seed reserve (cf. recital 52).
- (125) According to the Estonian authorities, the requirement to propagate and store high-yielding varieties of seed was objective and allowed all interested parties to participate in the tender. No specific method was prescribed for the participants in the tender (cf. recital 53). However, the Commission notes that the announcement of the tender did not specify that the potential tenderer had to propagate and store certain seeds, it specified only that the agricultural activity of one specific company – AS Tartu Agro – had to be continued after acquiring the leased land. This is clearly conditional.
- (126) However, even if the condition set out in the announcement of the tender was limited to the propagation and storing of the above mentioned seeds, it would still have to be considered conditional and referring to the activities of AS Tartu Agro. Namely the condition of propagating particular high-yielding varieties of seed meeting OECD standards and storing them (in the leased land) does not arise from the general domestic law. This obligation was put on AS Tartu Agro, respectively on Tartu State Farm in 1997 (cf. recital 54) by an order from the Minister for Agriculture. Therefore, this obligation is not linked to the leased land but linked to the activities of AS Tartu Agro. Likewise the comments of the complainant emphasise that the tender was important for AS Tartu Agro (recital 93). Therefore, the Commission concludes that neither – the propagation and storing special seed nor the continuation of the agricultural activities of AS Tartu Agro derived from the domestic law, but instead the latter represents a condition of the tender.
- (127) As regards whether the propagation and storing of the specific seeds or the condition of continuation of the agricultural production activity of AS Tartu Agro was a decision from a planning authority, the Commission finds that it was not. In general, a planning authority prepares and implements a development plan of a certain local area including giving building permits for land parcels. The designated use of the leased land was and still is the agricultural production in general. Generally, the land use represents the economic activities like agricultural, residential, industrial, commercial uses of land. Agricultural land is defined as the land area that is either arable, under permanent crops, or under permanent pastures ⁽²⁵⁾. The planning authorities do not define which crops or which agricultural activities can be pursued in agricultural land. In the case at hand, the condition was even imposed by an order of a Minister on Tartu State Farm, and therefore not by a decision of a planning authority linked to the leased land. Similarly, the planning authority cannot limit the eligible companies to be active in the agricultural sector, which the condition of the continuation of the agricultural activities of AS Tartu Agro suggests.
- (128) Further by making the lease of land subject to a requirement that the agricultural production activity of one certain undertaking should be continued limits clearly the use of the land for the potential tenderer. Thus renouncing from the possibility to obtain the highest possible rental fee, the State did not act as a private market operator but rather as a public authority pursuing policy considerations. A private market operator not having these constraints would have been able to attract more offers and achieved a higher price.

⁽²⁴⁾ Point 94 of the Notice on the notion of State aid.

⁽²⁵⁾ <https://data.oecd.org/agrland/agricultural-land.htm>

- (129) Also the comments of AS Tartu Agro seem to confirm that the condition introduced in the tender announcement was linked to the public task of cultivating seeds meeting OECD standards (cf. recitals 71 and 72). Those comments also show that the condition introduced in the tender announcement was relevant for the privatisation of AS Tartu Agro. This argument seems to be supported also by the complainant (cf. recital 93). However, the transactions of leasing the land and the privatisation of AS Tartu AGRO were two separate transactions and the privatisation of AS Tartu Agro is not assessed in the present decision.
- (130) Based on the above, the Commission concludes that the tender procedure to lease the land was non-transparent, discriminatory and conditional and, therefore, did not fulfil the conditions necessary to conclude that the transaction was in line with market conditions.
- (131) Further, it needs to be assessed whether the Ministry's lease of land to AS Tartu Agro complied with market conditions based on the expert opinion set out in the Uus Maa report referred to in recital 28 and the data submitted by the Estonian authorities referred to in recital 39 ⁽²⁶⁾. It should therefore, be analysed firstly whether, the rental fee, which encompasses only the rent and not the other expenses like land taxes and maintenance, paid by AS Tartu Agro was at the level of the average rental fee for agricultural land in Estonia throughout the period of the lease. As regards the other obligations of AS Tartu Agro, they will be assessed in the next step.
- (132) In establishing the market price of the rental fee, the Commission will examine the possible estimates available: (i) a report of the rental prices by a private real estate company Uus Maa (cf. recital 28); (ii) data from the Statistical Office (cf. recital 39).
- (133) The Commission considers the Uus Maa report to provide plausible, albeit conservative estimates of the rental fees in Tartu county in the period 2000 to 2014. As regards the data of the Statistical Office, the market estimates for the years 2015–2017 are average prices of the reported rental fee and do not constitute an expert assessment of the rental price of the land. These estimates do not take into account the specific characteristics of the rented land of AS Tartu Agro.
- (134) According to the Uus Maa report, the rental fee for agricultural land in Tartumaa ranged from EUR 6–10/ha in the period of 2000–2004 (cf. recital 31). AS Tartu Agro paid a rental fee of EUR 0,20/ha, which encompasses only the rent and not the other expenses like taxes and maintenance (cf. recital 25) in 2000, therefore the rental fee paid by AS Tartu Agro is lower than the market price.
- (135) According to the Uus Maa report, in the period of 2005–2009, the rental fee for agricultural land in Tartumaa increased to EUR 10–20/ha (cf. recital 32). According to the Estonian authorities, the rental fee of AS Tartu Agro was increased on 14 January 2005 to EUR 1,66/ha and on 21 March 2007 to EUR 5,21/ha. The rental fee of AS Tartu Agro is lower than the market price also in that period.
- (136) In the period 2010–2014, the rental prices increased further, ranging from EUR 25–60/ha according to the report (cf. recital 35). The rental fee paid by AS Tartu Agro was increased on 12 May 2009 to EUR 8,68/ha (cf. recital 25), however it seems to have remained lower than the market price also in the period 2010–2014.
- (137) Based on the data submitted by the Estonian authorities, in 2015 the average rental fee for agricultural land in Estonia was EUR 52/ha and EUR 55/ha respectively for arable land (cf. recital 39, Table). In the Tartu county, where the leased land of AS Tartu Agro is situated, the fee was EUR 63/ha and EUR 65/ha. According to the Estonian authorities AS Tartu Agro paid a rental fee of EUR 26,86/ha. Therefore, the rental fee of AS Tartu Agro was lower than the market price in 2015.
- (138) In 2016, the average rental fee for agricultural and arable land in Estonia was respectively EUR 52/ha and EUR 54/ha (cf. recital 39, Table). In the Tartu county the fee was respectively EUR 61/ha and EUR 61/ha. According to the Estonian authorities, AS Tartu Agro paid a rental fee of EUR 27,30/ha. Therefore, the rental fee of AS Tartu Agro was lower than the market price also in 2016.
- (139) In 2017, the average rental fee for agricultural and arable land in Estonia was respectively EUR 58/ha and EUR 60/ha (cf. recital 39, Table). There is no data for Tartu county for that year. According to the Estonian authorities, AS Tartu Agro paid a rental fee of EUR 27,28/ha. Therefore, the rental fee on its own of AS Tartu Agro was lower than the market price also in 2017.
- (140) Based on those figures, the rental fee on its own was below the market price throughout the period 2000–2017.

⁽²⁶⁾ Judgment of the General Court of 28 February 2012, *Land Burgenland and Austria v Commission*, Joined Cases T-268/08 and T-281/08, ECLI:EU:T:2012:90, paragraph 72.

- (141) Below, the other obligations listed in the contract: (i) annual investments in drainage systems; (ii) expenditures for the maintenance of the land and for increasing the soil quality including expenditures such as those for crop protection, mineral and organic fertilisers, liming and maintenance of roadsides; and (iii) payment of all taxes (recital 26) will be assessed.
- (142) The Estonian authorities argue that all above mentioned lessee's obligations should be taken into account when assessing the rental income.
- (143) The Commission can accept that argument for part of the annual investments in the drainage system (recitals 36, 60 and 79). Pursuant to Section 16(1) of the Land Improvement Act (*Maaparandusseadus*) in force at the time, the maintenance of a land improvement system was the obligation of the owner of the land. However, the above-mentioned legal basis refers to the maintenance of the land improvement system in general, and does not specify e.g. the minimum requirements for the land improvements systems or regulate the investments in new drainage systems. In the case at hand, according to the Ministry AS Tartu Agro made the investments in the amount fixed in the contract without being reimbursed by the State. But as regards the amount of these investments, it seems that it was proposed by AS Tartu Agro and not imposed on AS Tartu Agro (cf. recitals 77–79). According to the evaluation panel's minutes, AS Tartu Agro's initial offer for the rental fee was EEK 10 000 (ca. EUR 639) per year, respectively EEK 3,24/ha (EUR 0,20/ha), plus to pay the land tax of EEK 85 000 (ca. EUR 5 432) and to make investments with up to EEK 5 million (ca. EUR 320 000) per year (cf. recital 20). After the restricted negotiations, the rental fee was fixed at the same level as in the initial offer (cf. recital 25 and the other obligations as followed (i) annual investments amounting to EEK 400 000 (ca. EUR 25 565 respectively EUR 8,28/ha) in drainage systems; (ii) expenditures for the maintenance of the land and for increasing the soil quality in total of EEK 3 981 100 (ca. EUR 254 444); and (iii) payment of all taxes (cf. recital 26). Further, AS Tartu Agro argues that it invested even more in the drainage system, namely 3,57 times more than what was required in the lease contract (cf. recital 78). Therefore, this seems to suggest that the amount of investments in the drainage system originated from AS Tartu Agro and was definitely not required by a law or been imposed solely by the State, especially taken into account that the tender procedure was non-transparent, discriminatory and conditional (cf. recital 130).
- (144) Further, these kind of investments are for a longer term compared e.g. to the investments in crop protection and mineral fertilisers, which have to be made annually. At the same time, the lessor AS Tartu Agro also benefitted from such investments, which were contributing to the more efficient use of the land. The Commission notes that the lease contract had a long duration of 25 years, therefore, these investments also largely benefited AS Tartu Agro, which is the user of the land. As in general, the agricultural land drainage adds value to the production and maximises return for the crops grown for the producer⁽²⁷⁾. It increases yield potential, meaning that well drained soils maximise crop growth rates. Further, a drainage system reduces the variable costs of the production as well drained soils need less fertilisers and pesticides. Further, having well drained soils allow farm equipment to operate in an efficient way, therefore reduces e.g. diesel consumption, and consequently, decreases the costs of the producer. However, the Commission acknowledges that the State was relieved from some costs (maintenance) that it would otherwise had to bear as owner of the land, while still benefitting from a possible increase in land value. Therefore, contrary to the finding in the opening decision (cf. recital 61 of the opening decision), the Commission finds that the investments in the drainage system should be taken into account partly as revenue to the State. Taking into account the above mentioned arguments, the Commission finds that adding half of the investments in the drainage system to the rental income of the Ministry represents conservative estimate for the additional rental income for the Ministry. Especially as the overall benefits of these investments favoured largely AS Tartu Agro and the amount of the investments exceeded what was required by the law. Based above, half of the annual investments should be seen as a part of the rent income for the Ministry.
- (145) However, the Commission finds that the expenditures for maintenance of the land and for increasing the soil quality are in the interest of the lessee, as they are mostly linked to the costs of production inputs such as crop protection (pesticides) and mineral and organic fertilisers (also cf. recital 36). Generally, such inputs are used for each growing period and their type depends on the crop grown. Therefore, they form part of the annual production activity of AS Tartu Agro and benefit in essence only AS Tartu Agro as they increase for example the yields of the crops it grows. Therefore, Commission does not agree with the arguments of the Estonian authorities (recital 62) and of AS Tartu Agro (recitals 80 and 81). Further, if the State had decided to use the land for other purposes (e.g. building houses in

⁽²⁷⁾ <http://www.fao.org/3/w7224e/w7224e05.htm>

the plots due to the vicinity of the second biggest city of Estonia – Tartu), the past use of the pesticides and fertilisers would have limited impact on the value of the land. In addition, taking into account the long lease period of 25 years, the primary beneficiary is the user of the land – AS Tartu Agro. In addition, as the complainant indicates, the State did not verify AS Tartu Agro's performance of those obligations (cf. recital 87). Based on the above, the Commission concludes that the expenditures for maintenance of the land and for increasing the soil quality in total of ca. EUR 254 444 should be not considered as part of the rent income of the State.

- (146) Taxes are generally no rental income as such, as they are paid by the owner of the assets to the State. However, in the case at hand, AS Tartu Agro paid the taxes on behalf of the owner of the land (the State) as argued by the Estonian authorities and AS Tartu Agro (respectively recitals 63 and 82–83) and, therefore, the State did not have its own expenses on this item. Therefore, contrary to the opening decision (cf. recital 61 of the opening decision), the value of the annual land taxes paid by AS Tartu Agro should be seen as a part of the rental income for the Ministry.
- (147) Even if the rental fee is increased by the following components described above – half of the investments in the drainage system and the taxes paid by AS Tartu Agro – the rental income remains lower than the market rental fee.
- (148) Based on the above, the rental fee paid by AS Tartu Agro was below the market price throughout the period 2000–2017. In addition, taking into account that the tender procedure was non-transparent, discriminatory and conditional, the Commission therefore, concludes that the lease of the land by the Ministry conferred an advantage on AS Tartu Agro.

Selectivity

- (149) As the Court has stated, where individual aid is at issue, the identification of the economic advantage is, in principle, sufficient to support the presumption that a measure is selective ⁽²⁸⁾. The Commission does not agree with the argument of the Estonian authorities that the measure was not selective (recital 66). In that regard, the measure conferred an advantage only on AS Tartu Agro as the public land in question was leased only to that company (cf. recital 14). This decision was a result of a tender procedure, which was non-transparent, discriminatory and conditional (see recitals 110–130). Therefore, the selectivity condition is fulfilled.

Distortion of competition and effect on trade

- (150) The measure must be liable to distort competition and affect trade between Member States to be considered State aid within the meaning of Article 107(1) TFEU.
- (151) According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit, which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition. Therefore, any aid granted to AS Tartu Agro, in the form of a discounted rent, would allow the company to increase or at least maintain its activities as a result of the aid. The aid is thus liable to limit the opportunities for other undertakings.
- (152) Pursuant to the case law of the Court of Justice, aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade. The beneficiary operates on the dairy, meat and cereals markets (cf. recital 10) where intra-trade takes place. In 2018, the value of Estonian exports in EU-28 intra trade in meat and dairy production was EUR 51 million and EUR 177 million respectively ⁽²⁹⁾. The sectors concerned are open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States. On the contrary, to the Estonian authorities (recital 66), the Commission finds, in the light of the foregoing considerations, that the measure is liable to distort competition and affect trade between Member States.
- (153) Since all the necessary conditions of Article 107(1) TFEU are met, the Commission concludes that the measure under assessment constitutes State aid. Therefore, the advantage has to be quantified.

⁽²⁸⁾ See judgment of 4 June 2015 *Commission v MOL*, C-15/14 P EU:C:2015:362, paragraph 60.

⁽²⁹⁾ Eurostat: <https://ec.europa.eu/eurostat/web/international-trade-in-goods/data/database>

Quantification of the advantage

- (154) Taking into account the above mentioned considerations, the Uus Maa report should be used to establish the estimates for the rental fee for the period 2000–2009. According to the Uus Maa report, the rental fee for agricultural land in Tartumaa ranged from EUR 6–10/ha in the period of 2000–2004 (cf. recital 33). Based on the above, an annual average rental fee (a simple average) based on the Uus Maa report should be compared to the annual rental fee paid by AS Tartu Agro in the years 2000–2004.
- (155) As regards the period 2005–2009, the rental fee for agricultural land in Tartumaa increased to EUR 10–20/ha. Similarly, an annual simple average rental fee based on the Uus Maa report should be compared to the annual rental fee paid by AS Tartu Agro in the years 2005–2009.
- (156) In the period 2010–2014, the rental fees based on the Uus Maa report ranged from EUR 25–60/ha. This range is rather large, therefore the available average rental fees (in Estonia, agricultural land) of the Statistical Office should be used to establish the annual market proxy (cf. recital 39, Table). Similarly, for the years 2015–2018, the average annual rental fees (in Estonia, agricultural land) of the Statistical Office should be used.
- (157) Further, the Estonian authorities argue that at least 12,34 % of the leased land is unsuitable for agricultural production (cf. recital 56). However, the Commission finds that the contract did not specify that any part of the land was unsuitable for agriculture. The contractual partners would normally specify the particularities of the assets in the contract and adapt the use of terms, namely the rental fee, accordingly.
- (158) In addition, the complainant has submitted information as regards the size and use of the plots (cf. recitals 88–91). That information shows that AS Tartu Agro has applied for EU agricultural support and had the possibility to receive additional income from the land, e.g. by selling lumber (cf. recital 91). As an example of payments of agricultural support, AS Tartu Agro received in 2010 agricultural support for 2 912,76 ha, representing approximately 95 % of the leased object. The Commission thus finds that, even if not all the plots were pure arable land, the non-arable land could be useful in other ways. For example, the forest land could be used for the production of timber, the grassland could be used for the production of fodder and was eligible for payments of EU agricultural support and the access roads (cf. recital 56) gave a valuable direct access to the plots to transport away production output (wheat, fodder etc.). Taking into account that it is difficult to find reliable proxies for the market price for renting forest land, grass land and other land, the Commission finds that the number of hectares for which agricultural support was paid could serve as a basis to calculate the advantage. The number of hectares for which agricultural support was paid represented approximately 95 %–97 % of the leased object during the period of 2004–2018.
- (159) Further, the Estonian authorities claim that there was only a limited number of agricultural producers who were interested in leasing more than 3 000 ha of agricultural land (cf. recital 57). In this regard, the Commission considers that the Estonian authorities could have rented the land in separate plots. The land was divided already into 23 separate plots, which could have been rented out separately. Moreover, the number of potential eligible tenderers was further limited by the condition that the agricultural production of AS Tartu Agro should be continued.
- (160) The Estonian authorities also argue that the non-existent lease market put limits on the outcome of the tender. The Uus Maa report suggests that the market situation was unstable but still indicates that there were rental contracts for the use of agricultural land signed for a short period. Therefore, taking into account the market situation, a private market investor would have set a shorter lease period than 25 years.
- (161) The Estonian authorities further argue that all the lessee's obligations – (i) annual investments in drainage system; (ii) expenditures for maintenance of the land and for increasing the soil quality; and (iii) payment of taxes – should be taken into account when assessing the rental income (cf. recital 26).
- (162) The Commission can accept that argument as far as the annual investments in the drainage system are concerned (recitals 36, 60 and 79) as described in recitals 143 and 144. Therefore, half of the value of the annual investments as fixed in the lease contract should be seen as a part of the rent income. This appears to be a conservative estimate based on the facts that the maintenance of a land improvement system was the obligation of the owner of the land according to the law (cf. recitals 143 and 144), however, as the lease contract had a long duration of 25 years, these investments largely benefitted AS Tartu Agro, which is the user of the land.

- (163) However, the Commission finds that the expenditures for maintenance of the land and for increasing the soil quality are mainly of interest to the lessee, as they are mostly linked to the costs of production inputs such as crop protection (pesticides) and mineral and organic fertilisers as described in recital 145 and should be not considered as rental income for the State.
- (164) Taxes are generally no rental income as such, as they are paid by the owner of the assets to the State. However, in the case at hand, AS Tartu Agro paid the land taxes on behalf of the owner of the land (the State) as argued in recital 146 therefore, the value of the annual land taxes paid by AS Tartu Agro should be seen as a part of the rental income for the Ministry.
- (165) Based on the above, the advantage shall be calculated as the difference between the annual estimates of the market value for the rental fee (cf. recitals 154–156) and the actual rental fee paid to the Ministry. In addition, half of the value of the annual implemented investments that AS Tartu Agro has made in the drainage system and the land taxes paid by AS Tartu Agro on behalf of the owner of the land should be added to the actual rental fee as described in recitals 162–164. As regards the size of the leased object, the number of hectares for which agricultural support was paid should serve as a base to calculate the advantage (cf. recital 158).

5.2. Qualification of measure as existing or new aid

- (166) The lease contract between the Ministry and AS Tartu Agro was concluded in 2000 and thus existed prior to Estonia's accession to the European Union. However, it does not fulfil the conditions for being considered to be existing aid, as defined in Article 1(b) of Council Regulation (EU) 2015/1589 ⁽³⁰⁾, read in combination with Annex IV to the Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia ⁽³¹⁾. According to Annex IV Section 4 Agriculture point 4, to be regarded as existing aid, the aid measure shall be communicated to the Commission within 4 months of the date of accession, all other aid is considered new aid. Since no such notification took place, the current measure is a new aid within the meaning of Article 1(c) of Regulation (EU) 2015/1589 from 2000 onwards.

5.3. Compatibility of the aid

- (167) A measure caught by Article 107(1) TFEU is generally incompatible with the functioning of the internal market, unless if it can benefit from one of the derogations provided for in the TFEU. Under Article 107(3)(c) TFEU, an aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. For this derogation to be applicable, the aid must comply with the relevant Union State aid rules.
- (168) According to the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid ⁽³²⁾, all unlawful aid under Article 1(f) of Regulation (EU) 2015/1589 must be assessed in accordance with the texts in force at the time when the aid was granted.
- (169) As the aid was granted in 2000 and the conditions of the lease contract changed several times (cf. recital 27), this measure must be examined in the light of the Community Guidelines for State Aid in the agricultural and forestry sectors 2000 to 2006 ⁽³³⁾ and the subsequent Guidelines. The Commission considers that this measure cannot be declared compatible on the basis of the Guidelines applicable 2000–2006. Neither can this measure be declared compatible on the basis of the Community Guidelines for State Aid in the agricultural and forestry sectors 2007 to 2013 ⁽³⁴⁾ nor on the basis of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 ⁽³⁵⁾.

⁽³⁰⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

⁽³¹⁾ OJ L 236, 23.9.2003, p. 17.

⁽³²⁾ OJ C 119, 22.5.2002, p. 22.

⁽³³⁾ OJ C 28, 1.2.2000, p. 2.

⁽³⁴⁾ OJ C 319, 27.12.2006, p. 1.

⁽³⁵⁾ OJ C 204, 1.7.2014, p. 1. Amended by the Notices published in OJ C 390, 24.11.2015, p. 4; OJ C 139, 20.4.2018, p. 3 and OJ C 403, 9.11.2018, p. 10.

- (170) In general, State aid in the form of unduly low land rental fees constitutes operating aid in that it reduces the normal operating costs of the beneficiary. Operating aid is deemed to be *prima facie* incompatible with the internal market, in particular under Article 107(3)(c) TFEU ⁽³⁶⁾.
- (171) In any event, it has not been sufficiently demonstrated that the measure was necessary and proportionate to attain any objectives of common interest. Estonia did not advance any arguments on compatibility and in any event the measure at stake are to be regarded as operating aid. Therefore, the Commission has not identified any grounds to declare the aid compatible with the internal market in the light of Article 107(3) TFEU.
- (172) The Commission therefore concludes that the lease of the land to AS Tartu Agro by the Ministry constitutes State aid and that it is unlawful and incompatible with the internal market on basis of Article 107(1) TFEU.

6. RECOVERY

- (173) Given that the aid is unlawful and incompatible with the internal market, the Republic of Estonia should put an end to the measure and recover the aid granted from AS Tartu Agro, unless the aid has been granted to a specific project, which, at the time of granting, fulfilled all conditions of the block exemption regulations, *de minimis* regulation or of an aid scheme approved by the Commission.
- (174) Further, the amount of aid must be recovered in order to re-establish the situation that existed on the market prior to the granting of the aid. Article 17 of the Regulation (EU) 2015/1589 states that the powers of the Commission to recover aid shall be subject to a limitation period of 10 years ('limitation period'). The limitation period shall begin on the day on which the unlawful aid is awarded to the beneficiary. In the context of the measure at hand, the contract for the lease of agricultural land was signed between the Ministry and AS Tartu Agro on 16 November 2000 (cf. recital 24).
- (175) However, the Article 17 of the Regulation (EU) 2015/1589 specifies that any action taken by the Commission or by a Member State, acting at the request of the Commission, with regard to the unlawful aid shall interrupt the limitation period. In this context, the Commission contacted the Estonian authorities on this measure for the first time on 14 August 2014. Namely after receiving a complaint on 24 July 2014, the Commission forwarded the complaint to the Estonian authorities and invited them to submit information and to comment on the allegations made by the complainant (cf. recital 1). Therefore, the limitation period was interrupted by the action taken by the Commission at that date.
- (176) Therefore, the aid received by AS Tartu Agro should be recovered from 14 August 2004 onwards. The amount to be recovered should be calculated as described in recitals 154 to 165. That amount shall bear interest, calculated in compliance with Article 9 of Commission Regulation (EC) No 794/2004 ⁽³⁷⁾, from 14 August 2004 and until full recovery,

HAS ADOPTED THIS DECISION:

Article 1

The State aid in form of a rent of agricultural land for a rate, which is below the market price, was unlawfully granted by Estonia, in breach of Article 108(3) of the Treaty on the Functioning of the European Union, in favour of AS Tartu Agro.

Article 2

The aid does not constitute State aid if, at the time it was granted, it met the conditions of Article 2 of Council Regulation (EC) No 994/98 ⁽³⁸⁾ which applied at the time the aid was granted.

⁽³⁶⁾ Case C-156/98 *Germany v Commission*, EU:C:2000:467, paragraph 30, Joined Cases C-71/09 P, C-73/09 P and C-76/09 P *Comitato 'Venezia vuole vivere' v Commission*, ECLI:EU:C:2011:368, paragraph 136, and Case T-459/93 *Siemens v Commission*, EU:T:1995:100, paragraph 48.

⁽³⁷⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

⁽³⁸⁾ Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (OJ L 142, 14.5.1998, p. 1).

Article 3

Individual aid granted under the measure referred to in Article 1, which, at the time it is granted, fulfils the conditions laid down by Commission Regulation (EU) No 702/2014 ⁽³⁹⁾ or by any other approved aid scheme is compatible with the internal market, up to maximum aid intensities applicable to that type of aid.

Article 4

1. The Republic of Estonia shall recover the aid referred to in Article 1 from AS Tartu Agro.
2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of AS Tartu Agro until their actual recovery.
3. The interest on the sum to be recovered shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and Commission Regulation (EC) No 271/2008 ⁽⁴⁰⁾ amending Regulation (EC) No 794/2004.

Article 5

1. Recovery of the aid granted under the schemes referred to in Article 1 shall be immediate and effective.
2. The Republic of Estonia shall ensure that this Decision is implemented within four months following the notification of this Decision.

Article 6

1. Within two months following notification of this Decision, the Republic of Estonia shall submit the following information:

the total amount (capital and interest) to be recovered from AS Tartu Agro that received aid, which is not covered by the *de minimis* rule, Regulation (EU) No 702/2014 or by any approved aid scheme;

2. The Republic of Estonia shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision.

Article 7

This Decision is addressed to the Republic of Estonia.

Done at Brussels, 24 January 2020.

For the Commission
Margrethe VESTAGER
Executive Vice-President

⁽³⁹⁾ Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1).

⁽⁴⁰⁾ Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 82, 25.3.2008, p. 1).

COMMISSION IMPLEMENTING DECISION (EU) 2021/105**of 28 January 2021****concerning the extension of the action taken by the Danish Environmental Protection Agency permitting the making available on the market and use of the biocidal product Biobor JF in accordance with Article 55(1) of Regulation (EU) No 528/2012 of the European Parliament and of the Council***(notified under document C(2021) 375)***(Only the Danish text is authentic)**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) On 1 May 2020 the Danish Environmental Protection Agency ('the competent authority') adopted a decision in accordance with Article 55(1), first subparagraph, of Regulation (EU) No 528/2012 to permit the making available on the market and use of the biocidal product Biobor JF for antimicrobial treatment of aircraft fuel tanks until 29 October 2020 ('the action'). The competent authority informed the Commission and the competent authorities of the other Member States about the action and the justification for it, in accordance with Article 55(1), second subparagraph, of that Regulation.
- (2) According to the information provided by the competent authority, the action was necessary in order to protect public health. The microbiological contamination of aircraft fuel tanks and fuel systems can lead to malfunctions of the aircraft engine and endanger its airworthiness, thus endangering the safety of passengers and crew. The COVID-19 pandemic and the ensuing flight restrictions led to numerous aircraft being temporarily parked. The immobility of aircraft is an aggravating factor of microbiological contamination.
- (3) Biobor JF contains 2,2'-(1-methyltrimethylenedioxy)bis-(4-methyl-1,3,2-dioxaborinane) (CAS number 2665-13-6) and 2,2'-oxybis (4,4,6-trimethyl-1,3,2-dioxaborinane) (CAS number 14697-50-8), active substances for use in biocidal products of product-type 6 as preservatives for products during storage as defined in Annex V to Regulation (EU) No 528/2012. As those active substances are not listed in Annex II to Commission Delegated Regulation (EU) No 1062/2014 ⁽²⁾, they are not included in the work for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012. Article 89 of that Regulation therefore does not apply to them and they have to be assessed and approved before biocidal products containing them can be authorised also at national level.
- (4) On 2 October 2020, the Commission received a reasoned request from the competent authority to extend the action in accordance with Article 55(1), third subparagraph, of Regulation (EU) No 528/2012. The reasoned request was made on the basis of concerns that air transport safety might continue to be endangered by microbiological contamination of aircraft fuel tanks and fuel systems after 29 October 2020 and the argument that Biobor JF is essential in order to control such microbiological contamination.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 294, 10.10.2014, p. 1).

- (5) According to the information provided by the competent authority, Biobor JF is the only product available for this use. The only alternative biocidal product recommended by aircraft and engine manufacturers for the treatment of microbiological contamination (Kathon™ FP 1.5) was withdrawn from the market in March 2020 due to severe engine behaviour anomalies noticed after the treatment with that product.
- (6) As indicated by the competent authority, there are no sufficient mechanical alternatives for the treatment of microbiological contamination.
- (7) According to the information available to the Commission services, the manufacturer of Biobor JF has taken steps towards the regular authorisation of the product and an application for approval of the active substances it contains is expected to be submitted in the near future. The approval of the active substances and subsequent authorisation of the biocidal product would be a permanent solution for the future, but a significant amount of time will be needed for the completion of those procedures.
- (8) As the lack of control of microbiological contamination of aircraft fuel tanks and fuels systems might endanger the air transport safety and that danger cannot be adequately contained by using another biocidal product or by other means, it is appropriate to allow the competent authority to extend the action.
- (9) Considering that the action has expired on 29 October 2020, this Decision should have retroactive effect.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

The Danish Environmental Protection Agency may extend the action to permit the making available on the market and use of the biocidal product Biobor JF for antimicrobial treatment of aircraft fuel tanks until 3 May 2022.

Article 2

This Decision is addressed to the Danish Environmental Protection Agency.

It shall apply from 30 October 2020.

Done at Brussels, 28 January 2021.

For the Commission
Stella KYRIAKIDES
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2021/106**of 28 January 2021****concerning the extension of the action taken by the French Ministry for the Ecological Transition permitting the making available on the market and use of disinfection products containing propan-2-ol in accordance with Article 55(1) of Regulation (EU) No 528/2012 of the European Parliament and of the Council***(notified under document C(2021) 380)***(Only the French text is authentic)**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) On 13 March 2020, the French Ministry for the Ecological Transition ('the competent authority') adopted, in accordance with the first subparagraph of Article 55(1) of Regulation (EU) No 528/2012, a decision (subsequently amended on 29 June 2020) to permit the making available on the market and use of disinfection products containing propan-2-ol for human hygiene (product-type 1 as defined in Annex V to Regulation (EU) No 528/2012), for a period lasting until 31 December 2020 ('the action'). The competent authority informed the Commission and the competent authorities of the other Member States about the action and the justification for it, in accordance with the second subparagraph of Article 55(1) of that Regulation.
- (2) According to the information provided by the competent authority, the action was necessary in order to protect public health. On 11 March 2020 the World Health Organisation (WHO) declared a coronavirus disease (COVID-19) pandemic. On 22 March 2020, the French parliament adopted a law declaring a public health emergency. The use of alcohol-based hand disinfectants is recommended by the WHO and by the French Ministry for Health as a preventive measure against the spread of COVID-19 disease, as alternative to washing hands with soap and water. The product formulation covered by the action is in line with the propan-2-ol-based formulation recommended by WHO.
- (3) Propan-2-ol-based formulation recommended by WHO contains propan-2-ol as an active substance. Propan-2-ol is approved for use in biocidal products of product-type 1 (human hygiene) as defined in Annex V to Regulation (EU) No 528/2012.
- (4) Since the outbreak of the COVID-19 pandemic, disinfection products have been in extremely high demand in France, which led to unprecedented supply shortages of such products. Prior to the action there were no hand disinfectants authorised in France under Regulation (EU) No 528/2012. COVID-19 represents a serious threat to public health in France and additional disinfection products are crucial for the control of its spread, considering that washing hands with soap and water is not always possible.
- (5) On 10 September 2020, the Commission received a reasoned request from the competent authority to extend the action in accordance with the third subparagraph of Article 55(1) of Regulation (EU) No 528/2012. The request was made on the basis of concerns that public health might be endangered by COVID-19 beyond 31 December 2020 and taking into account that allowing additional disinfection products on the market is crucial in order to contain the danger posed by COVID-19, which cannot be contained by other means.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

- (6) According to the competent authority, a further increase in the demand of disinfection products is expected. Despite the existence of alternatives based on ethanol, the competent authority considers it necessary to maintain a diversified offer of disinfectant products on the market, in order to minimise the risk posed by potential raw material shortages.
- (7) The competent authority has encouraged operators that benefitted from the action to seek regular product authorisation as soon as possible. One operator confirmed its intention to apply for regular authorisation of its propan-2-ol-based disinfectant.
- (8) As COVID-19 continues to pose a danger to public health and such danger cannot be adequately contained in France in the absence of additional disinfection products allowed on the market, it is appropriate to allow the competent authority to extend the action for a period not exceeding 550 days starting from the day following the expiry of the initial period of 180 days from the decision of the competent authority of 13 March 2020.
- (9) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

The French Ministry for the Ecological Transition may extend the action to permit for the making available on the market and use of disinfection products containing propan-2-ol for human hygiene until 13 March 2022.

Article 2

This Decision is addressed to the French Ministry for the Ecological Transition.

Done at Brussels, 28 January 2021.

For the Commission
Stella KYRIAKIDES
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2021/107**of 28 January 2021****concerning the extension of the action taken by the Swedish Chemicals Agency permitting the making available on the market and use of the biocidal product Biobor JF in accordance with Article 55(1) of Regulation (EU) No 528/2012 of the European Parliament and of the Council***(notified under document C(2021) 401)***(Only the Swedish text is authentic)**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) On 4 May 2020 the Swedish Chemicals Agency ('the competent authority') adopted a decision in accordance with Article 55(1) first subparagraph of Regulation (EU) No 528/2012 to permit the making available on the market and use of the biocidal product Biobor JF for the antimicrobial treatment of fuel tanks and fuel systems of aircraft until 30 October 2020 ('the action'). The competent authority informed the Commission and the competent authorities of the other Member States about the action and the justification for it, in accordance with Article 55(1), second subparagraph, of that Regulation.
- (2) According to the information provided by the competent authority, the action was necessary in order to protect public health. The microbiological contamination of aircraft fuel tanks and fuel systems can lead to malfunctions of the aircraft engine and endanger its airworthiness, thus endangering the safety of passengers and crew. The Covid-19 pandemic and the ensuing flight restrictions led to numerous aircraft being temporarily parked. The immobility of aircraft is an aggravating factor of microbiological contamination.
- (3) Biobor JF contains 2,2'-(1-methyltrimethylenedioxy)bis-(4-methyl-1,3,2-dioxaborinane) (CAS number 2665-13-6) and 2,2'-oxybis (4,4,6-trimethyl-1,3,2-dioxaborinane) (CAS number 14697-50-8), active substances for use in biocidal products of product-type 6 as preservatives for products during storage as defined in Annex V to Regulation (EU) No 528/2012. As those active substances are not listed in Annex II to Commission Delegated Regulation (EU) No 1062/2014 ⁽²⁾, they are not included in the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012. Article 89 of that Regulation therefore does not apply to them and they have to be assessed and approved before biocidal products containing them can be authorised also at national level.
- (4) On 8 October 2020, the Commission received a reasoned request from the competent authority to extend the action in accordance with Article 55(1), third subparagraph, of Regulation (EU) No 528/2012. The reasoned request was made on the basis of concerns that air transport safety might continue to be endangered by microbiological contamination of aircraft fuel tanks and fuel systems after 30 October 2020 and the argument that Biobor JF is essential in order to control such microbiological contamination.
- (5) According to the information provided by the competent authority, the only alternative biocidal product recommended by aircraft and engine manufacturers for the treatment of microbiological contamination (KathonTM FP 1.5) was withdrawn from the market in March 2020 due to severe engine behaviour anomalies noticed after the treatment with that product.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 294 10.10.2014, p. 1).

- (6) As indicated by the competent authority, the alternative procedure for treating an existing microbiological contamination is manual removal in-tank, following defueling and purging of the aircraft. Those operations would have to be carried out regularly, together with microbiological testing of purged samples. The manual cleaning of contaminated tanks would expose workers to toxic gases and is unacceptable on that basis. Furthermore, the procedures would also be disproportionately burdensome, since it is still unclear when the need to keep aircraft parked for extended periods will come to an end.
- (7) According to the information provided by the competent authority, the manufacturer of Biobor JF has taken steps towards the regular authorisation of the product and an application for approval of the active substances it contains is expected to be submitted in the near future. The approval of the active substances and subsequent authorisation of the biocidal product would be a permanent solution for the future, but a significant amount of time will be needed for the completion of these procedures.
- (8) As the lack of control of microbiological contamination of aircraft fuel tanks and fuels systems might endanger the air transport safety and that danger cannot be adequately contained by using another biocidal product or by other means, it is appropriate to allow the competent authority to extend the action.
- (9) Considering that the action has expired on 30 October 2020, this Decision should have retroactive effect.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

The Swedish Chemicals Agency may extend the action to permit the making available on the market and use of the biocidal product Biobor JF for the antimicrobial treatment of fuel tanks and fuel systems of aircraft until 4 May 2022.

Article 2

This Decision is addressed to the Swedish Chemicals Agency.

It shall apply from 31 October 2020.

Done at Brussels, 28 January 2021.

For the Commission
Stella KYRIAKIDES
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2021/108**of 28 January 2021****concerning the extension of the action taken by the Hungarian National Public Health Centre permitting the making available on the market and use of the biocidal product Biobor JF in accordance with Article 55(1) of Regulation (EU) No 528/2012 of the European Parliament and of the Council***(notified under document C(2021) 403)***(Only the Hungarian text is authentic)**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) On 29 June 2020 the Hungarian National Public Health Centre ('the competent authority') adopted a decision in accordance with Article 55(1) first subparagraph of Regulation (EU) No 528/2012 to permit until 26 December 2020 the making available on the market and use of the biocidal product Biobor JF for the antimicrobial treatment of fuel tanks and fuel systems of aircraft ('the action'). The competent authority informed the Commission and the competent authorities of the other Member States about the action and the justification for it, in accordance with Article 55(1), second subparagraph, of that Regulation.
- (2) According to the information provided by the competent authority, the action was necessary in order to protect public health. The microbiological contamination of aircraft fuel tanks and fuel systems can lead to malfunctions of the aircraft engine and auxiliary engine and endanger its airworthiness, thus endangering the safety of passengers and crew. The COVID-19 pandemic and the ensuing flight restrictions led to numerous aircraft being temporarily parked. The immobility of aircraft is an aggravating factor of microbiological contamination.
- (3) Biobor JF contains 2,2'-(1-methyltrimethylenedioxy)bis-(4-methyl-1,3,2-dioxaborinane) (CAS number 2665-13-6) and 2,2'-oxybis (4,4,6-trimethyl-1,3,2-dioxaborinane) (CAS number 14697-50-8), active substances for use in biocidal products of product-type 6 as preservatives for products during storage as defined in Annex V to Regulation (EU) No 528/2012. As those active substances are not listed in Annex II to Commission Delegated Regulation (EU) No 1062/2014 ⁽²⁾, they are not included in the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012. Article 89 of that Regulation therefore does not apply to them and they have to be assessed and approved before biocidal products containing them can be authorised also at national level.
- (4) On 5 October 2020, the Commission received a reasoned request from the competent authority to extend the action in accordance with the Article 55(1), third subparagraph, of Regulation (EU) No 528/2012. The reasoned request was made on the basis of concerns that air transport safety might continue to be endangered by microbiological contamination of aircraft fuel tanks and fuel systems after 26 December 2020 and the argument that Biobor JF is essential in order to control such microbiological contamination.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 294, 10.10.2014, p. 1).

- (5) According to the information provided by the competent authority, the only alternative biocidal product recommended by aircraft and engine manufacturers for the treatment of microbiological contamination (Kathon™ FP 1.5) was withdrawn from the market in March 2020 due to severe engine behaviour anomalies noticed after the treatment with that product.
- (6) As indicated by the competent authority, the mechanical treatment of microbiological contamination of aircraft fuel tanks and fuel systems is not always possible. Moreover, it is to be avoided as it would expose workers to toxic gases.
- (7) According to the information provided by the competent authority, the manufacturer of Biobor JF has taken steps towards the regular authorisation of the product and an application for approval of the active substances it contains is expected to be submitted in the near future. The approval of the active substances and subsequent authorisation of the biocidal product would be a permanent solution for the future, but a significant amount of time will be needed for the completion of those procedures.
- (8) As the lack of control of microbiological contamination of aircraft fuel tanks and fuel systems might endanger the air transport safety and that danger cannot be adequately contained by using another biocidal product or by other means, it is appropriate to allow the competent authority to extend the action.
- (9) Considering that the action has expired on 26 December 2020, this Decision should have retroactive effect.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

The Hungarian National Public Health Centre may extend the action to permit the making available on the market and use of the biocidal product Biobor JF for the antimicrobial treatment of fuel tanks and fuel systems of aircraft until 30 June 2022.

Article 2

This Decision is addressed to the Hungarian National Public Health Centre.

It shall apply from 27 December 2020.

Done at Brussels, 28 January 2021.

For the Commission
Stella KYRIAKIDES
Member of the Commission

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2021 OF THE JOINT COMMITTEE UNDER THE AGREEMENT BETWEEN THE EUROPEAN UNION AND JAPAN FOR AN ECONOMIC PARTNERSHIP

of 25 January 2021

on the amendments to Annexes 14-A and 14-B on geographical indications [2021/109]

THE JOINT COMMITTEE,

Having regard to the Agreement between the European Union and Japan for an Economic Partnership (hereinafter referred to as the 'Agreement'), and in particular Articles 14.30 and 22.2 thereof,

Whereas:

- (1) The Agreement entered into force on 1 February 2019.
- (2) On 8 June 2019, Chapter III of Regulation (EC) No 110/2008 of the European Parliament and of the Council ⁽¹⁾ referred to in Part 1 of Annex 14-A and in Section A of Part 2 of Annex 14-B of the Agreement was repealed by Regulation (EU) 2019/787 of the European Parliament and of the Council ⁽²⁾. References to Regulation (EC) No 110/2008 in the Agreement should therefore be replaced accordingly by references to Regulation (EU) 2019/787.
- (3) On 28 November 2019, during the first meeting of the Committee on Intellectual Property, the European Union and Japan (hereinafter referred to as 'the Parties') discussed the modalities to amend Annex 14-B of the Agreement pursuant to Article 14.30 and agreed to continue discussions in the coming months aiming to reach an agreement related to the addition of new geographical indications (hereinafter referred to as 'GIs') at the next Joint Committee meeting. As a result of those discussions, the Parties confirmed that every year, starting from 2020 and until 2022 the Joint Committee will consider up to 28 names from the European Union and from Japan respectively to be protected as GIs and added in Annex 14-B of the Agreement, provided that those names are protected as GIs domestically ⁽³⁾. As from 2023, the Parties will work to continuously add to Annex 14-B additional GIs in view of each side's interests under close coordination between the Parties.
- (4) Following the request of the Parties and pursuant to paragraph 1 of Article 14.30, the European Union has completed the opposition procedure and the examination of 28 additional GIs of Japan and Japan has completed the opposition procedure and the examination of 28 additional GIs of the European Union.
- (5) On 2 March 2020, in accordance with paragraph 3 of Article 14.30 of the Agreement, Japan notified the European Union of the cessation of protection of the Japanese geographical indication '西尾の抹茶/Nishio Matcha' in Japan.

⁽¹⁾ 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).

⁽²⁾ 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 (OJ L 130, 17.5.2019, p. 1).

⁽³⁾ For greater certainty, the Joint Committee will consider 27 or 28 names from the European Union every year regardless of the number of the names from Japan.

- (6) On 28 December 2020, in accordance with paragraph 3 of Article 14.53 of the Agreement, the Committee on Intellectual Property recommended to the Joint Committee to amend Annex 14-A and Annex 14-B to the Agreement accordingly.
- (7) The Parties have already completed their internal procedures necessary for adoption of the Decision by the Joint Committee under the Agreement, and should swiftly endeavour to exchange the diplomatic notes confirming the amendments to the Agreement in order for them to enter into force not more than ten working days after the Decision is adopted.
- (8) Consequently, Annexes 14-A and 14-B to the Agreement should be amended, in accordance with paragraph 3 and subparagraphs 4(f) and 4(g) of Article 23.2 of the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

In Part 1 of Annex 14-A and in footnote 1 to the title 'The European Union' of Section A of Part 2 of Annex 14-B, references to EU regulation shall be amended as described in Annex 1 to this Decision.

Article 2

1. In Section A of Part 1 of Annex 14-B to the Agreement, the GIs listed in Annex 2 to this Decision shall be added under the corresponding list of GIs of the respective Member State of the European Union.
2. In Section B of Part 1 of Annex 14-B to the Agreement, the geographical indication '西尾の抹茶/Nishio Matcha' shall be removed from the list of GIs of Japan as indicated in Annex 3-Part 1 to this Decision and the GIs listed in Annex 3-Part 2 to this Decision shall be added to the list of GIs of Japan.
3. In Section A of Part 2 of Annex 14-B to the Agreement, the GIs listed in Annex 4 to this Decision shall be added under the corresponding list of GIs of the respective Member State of the European Union.
4. In Section B of Part 2 of Annex 14-B to the Agreement, the GIs listed in Annex 5 to this Decision shall be added to the list of GIs of Japan.

Article 3

1. In the third and fourth years of implementation of the Agreement, the Joint Committee will decide on the addition to Annex 14-B of the Agreement of a number of up to 28 names from the European Union and from Japan respectively to be protected as GIs under the Agreement, up to 83 names in total for each Party including the names under Article 2 of this Decision, provided that those names are GIs protected in the territory of the Party in accordance with its laws and regulations.
2. As from the fifth year of implementation of the Agreement, the Parties will work to continuously include additional GIs in view of the interests of each Party.

Article 4

This Decision is drawn up in duplicate. Articles 1 and 2 and Annexes to this Decision are drawn up in duplicate in the authentic languages of the Agreement provided for in paragraph 1 of Article 23.8 of the Agreement, all texts being equally authentic.

Article 5

This Decision shall be implemented by the Parties as referred to in paragraph 1 of Article 22.2 of the Agreement. The amendments to the Agreement adopted through this Decision shall be confirmed by and enter into force upon the exchange of diplomatic notes in accordance with paragraph 3 of Article 23.2 of the Agreement.

For the Joint Committee

Toshimitsu MOTEGI
Co-Chair [for Japan]

Valdis DOMBROVSKIS
Co-Chair [for EU]

ANNEX 1

In Part 1 of Annex 14-A and in footnote 1 to the title 'The European Union' of Section A of Part 2 of Annex 14-B, references to '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' shall be replaced by references 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'.

ANNEX 2

AUSTRIA

Name to be protected	Transcription into Japanese (for information purposes)	Category of good and short description [in square brackets, for information purpose]
'Vorarlberger Bergkäse	ファアアールベルガー・ベルク ケーゼ	Cheese'

BULGARIA

Name to be protected	Transcription into Japanese (for information purposes)	Category of good and short description [in square brackets, for information purpose]
'Българско розово масло (Transliteration into latin Alphabet: Bulgarsko rozovo maslo)	バルガルスコ・ロゾヴォ・マス ロ	Essential oils
Странджански манов мед/Манов мед от Странджа (Transliteration into latin Alphabet: Strandzhanski manov med/Manov med ot Strandzha)	ストラランジャンスキ・マノフ・ メッド/ マノフ・メッド・オット・スト ランジャ	Other products of animal origin (eggs, honey, various dairy products except butter, etc.) [honey]'

CROATIA

Name to be protected	Transcription into Japanese (for information purposes)	Category of good and short description [in square brackets, for information purpose]
'Baranjski kulen	バラニユスキ・クレン	Meat products (cooked, salted, smoked, etc.) [pork ham]
Dalmatinski pršut	ダルマティンスキ・ プロシュート	Meat products (cooked, salted, smoked, etc.) [pork ham]
Drniški pršut	ドゥルニシュキ・プロシュート	Meat products (cooked, salted, smoked, etc.) [pork ham]
Međimursko meso `z tiblice	メジムルスコ・メソ・ズ・ティ ブリツェ	Meat products (cooked, salted, smoked, etc.) [pork ham]
Slavonski med	スラヴォンスキ・メド	Other products of animal origin (eggs, honey, various dairy products except butter, etc.) [honey]'

FRANCE

Name to be protected	Transcription into Japanese (for information purposes)	Category of good and short description [in square brackets, for information purpose]
'Beurre Charentes-Poitou/Beurre des Charentes/Beurre des Deux-Sèvres	ブール・シャラント・ポワトゥー/ブール・デ・シャラント/ブール・デ・ドゥー・セーヴル	Oils and fats (butter, margarine, oil, etc.) [butter]
Laguiole	ライオル	Cheese'

GERMANY

Name to be protected	Transcription into Japanese (for information purposes)	Category of good and short description [in square brackets, for information purpose]
'Aachener Printen	アーヘナー・プリンテン	Bread, pastry, cakes, confectionery, biscuits and other baker's wares [biscuits]'

GREECE

Name to be protected	Transcription into Japanese (for information purposes)	Category of good and short description [in square brackets, for information purpose]
'Καλαμάτα (Transliteration into latin Alphabet: Kalamata)	カラマタ	Oils and fats (butter, margarine, oil, etc.) [olive oil]
Κασέρι (Transliteration into latin Alphabet: Kasseri)	カセリ	Cheese
Κεφαλογραβιέρα (Transliteration into latin Alphabet: Kefalograviera)	ケファログラヴィエラ	Cheese'

ITALY

Name to be protected	Transcription into Japanese (for information purposes)	Category of good and short description [in square brackets, for information purpose]
'Culatello di Zibello	クラテッロ・ディ・ジベッロ	Meat products (cooked, salted, smoked, etc.) [pork ham]
Toscano	トスカーノ	Oils and fats (butter, margarine, oil, etc.) [olive oil]'

ROMANIA

Name to be protected	Transcription into Japanese (for information purposes)	Category of good and short description [in square brackets, for information purpose]
'Magiun de prune Topoloveni	マジユン・デ・プルネ・トポロヴェニ	Fruit, vegetables and cereals fresh or processed [plum jam]
Salam de Sibiu	サラム・デ・シビウ	Meat products (cooked, salted, smoked, etc.) [pork salami]
Telemea de Ibănești	テレメア・デ・イバネシュティ	Cheese'

SLOVENIA

Name to be protected	Transcription into Japanese (for information purposes)	Category of good and short description [in square brackets, for information purpose]
'Kranjska klobasa	クランスカ・クロバサ	Meat products (cooked, salted, smoked, etc.) [pork sausage]'

SPAIN

Name to be protected	Transcription into Japanese (for information purposes)	Category of good and short description [in square brackets, for information purpose]
'Estepa	エステパ	Oils and fats (butter, margarine, oil, etc.) [olive oil]'

ANNEX 3

PART 1

The geographical indication ‘西尾の抹茶/Nishio Matcha’ shall be removed from the list of GIs of Japan in Section B of Part 1 of Annex 14-B to the Agreement.

PART 2

Name to be protected	Transcription into Latin alphabet (for information purposes)	Category of good and short description [in square brackets, for information purpose]
‘水戸の柔甘ねぎ’	Mito no Yawaraka Negi	Agricultural product [green onion]
松館しぼり大根	Matsudate Shibori Daikon	Agricultural product [Japanese white radish (daikon)]
対州そば	Taisyu Soba	Agricultural product [buckwheat] Processed agricultural product [buckwheat flour]
山形セルリー/ Yamagata Celery	Yamagata Celery	Agricultural product [celery]
南郷トマト	Nango Tomato	Agricultural product [tomato]
ヤマダイかんしょ/  かんしょ	Yamadai Kansho	Agricultural product [sweet potato]
岩出山凍り豆腐/ 岩出山名産凍り豆腐	Iwadeyama Koridofu/ Iwadeyama Meisan Koridofu	Processed agricultural product [freeze dried bean curd]
くまもとあか牛	Kumamoto Akaushi	Fresh meat [beef]
二子さといも/二子いものこ	Futago Satoimo/ Futago Imonoko	Agricultural product [taro]
越前がに/越前かに	Echizen Gani/Echizen Kani	Marine product [snow crab] Processed marine product [boiled snow crab]
大山ブロッコリー/ Daisen Broccoli	Daisen Broccoli	Agricultural product [broccoli]
奥久慈しゃも/ Okukuji Shamo Chicken	Okukuji Shamo	Fresh meat [chicken, offal meat]
こおげ花御所柿/ Koge Hanagoshogaki	Koge Hanagoshogaki	Agricultural product [Japanese persimmon]
菊池水田ごぼう/ Kikuchi Suiden Gobo	Kikuchi Suiden Gobo	Agricultural product [burdock]
つるたスチューベン/ Tsuruta Steuben ⁽¹⁾	Tsuruta Steuben	Agricultural product [grapes]
小笹うるい/Ozasa Urui	Ozasa Urui	Agricultural product [hosta]
東京しゃも/ Tokyo Shamo	Tokyo Shamo	Fresh meat [chicken, offal meat]

Name to be protected	Transcription into Latin alphabet (for information purposes)	Category of good and short description [in square brackets, for information purpose]
佐用もち大豆/ Sayo Mochidaizu	Sayo Mochidaizu	Agricultural product [soy beans]
いぶりがっこ/Iburigakko	Iburigakko	Processed agricultural product [pickles]
大栄西瓜/Daiei Suika	Daiei Suika	Agricultural product [watermelon]
津南の雪下にんじん/ Tsunan no Yukishita Ninjin	Tsunan no Yukishita Ninjin	Agricultural product [carrot]
善通寺産四角スイカ/Zentsujisan Shikakusuika	Zentsujisan Shikakusuika	Agricultural product [watermelon]
比婆牛/Hiba Gyu	Hiba Gyu	Fresh meat [beef]
伊吹そば/Ibuki Soba/伊吹在来そば/ Ibuki Zairaisoba	Ibuki Soba/Ibuki Zairaisoba	Agricultural product [buckwheat]
東出雲の(細)ほし柿/Higashiizumo no Maruhata Hoshigaki/Higashiizumo no Maruhata Hoshikaki	Higashiizumo no Maruhata Hoshigaki	Processed agricultural product [dried Japanese persimmon]

(¹) For greater certainty, varietal names containing or consisting of 'Steuben' may continue to be used on similar goods, provided that the consumer is not misled on the nature of such term or the precise origin of the good.'

ANNEX 4

ESTONIA

Name to be protected	Transcription into Japanese (for information purposes)	Category of good and short description [in square brackets, for information purpose]
'Estonian vodka	エストニアン・ウォッカ	Spirits'

FRANCE

Name to be protected	Transcription into Japanese (for information purposes)	Category of good and short description [in square brackets, for information purpose]
'Cassis de Dijon	カシス・ドウ・ディジョン	Spirits'

GERMANY

Name to be protected	Transcription into Japanese (for information purposes)	Category of good and short description [in square brackets, for information purpose]
'Pfalz	ファルツ	Wine'

IRELAND

Name to be protected	Transcription into Japanese (for information purposes)	Category of good and short description [in square brackets, for information purpose]
'Irish Poteen/Irish Poitín	アイリッシュポティーン/アイリッシュポッチーン	Spirits'

SLOVENIA

Name to be protected	Transcription into Japanese (for information purposes)	Category of good and short description [in square brackets, for information purpose]
'Goriška Brda	ゴリシュカ・ブルダ	Wine
Štajerska Slovenija	シュタイエルスカ・スロヴェニア	Wine'

SPAIN

Name to be protected	Transcription into Japanese (for information purposes)	Category of good and short description [in square brackets, for information purpose]
'Cariñena	カリニエナ	Wine'

ANNEX 5

Name to be protected	Transcription into Latin alphabet (for information purposes)	Category of good and short description [in square brackets, for information purpose]
北海道	Hokkaido	Wine
灘五郷	Nadagogo	Seishu (Sake)
はりま	Harima	Seishu (Sake)'

**DECISION No 2/2021 OF THE JOINT COMMITTEE ESTABLISHED UNDER THE AGREEMENT
BETWEEN THE EUROPEAN UNION AND JAPAN FOR AN ECONOMIC PARTNERSHIP**

of 25 January 2021

**on the amendment of Appendices 2-C-1 and 2-C-2 to Annex 2-C on Motor Vehicles and Parts
[2021/110]**

THE JOINT COMMITTEE,

Having regard to the Agreement between the European Union and Japan for an Economic Partnership ('the Agreement'), and in particular paragraph 3 and subparagraph 4(b) of Article 23.2 thereof and paragraph 1 of Article 9 of Annex 2-C to the Agreement,

Whereas:

- (1) Since the signing of the Agreement and as a result of the progress in regulatory discussions in the United Nations Economic Commission for Europe (UNECE), the European Union and Japan ('the Parties') now apply two additional UN Regulations that were not listed in Appendix 2-C-1 to Annex 2-C to the Agreement. Furthermore, two UN Regulations that were listed in Appendix 2-C-2 to Annex 2-C to the Agreement are now applied by both Parties and are to be transferred to Appendix 2-C-1. Appendices 2-C-1 and 2-C-2 should therefore be updated in accordance with Article 9 of Annex 2-C to the Agreement. Such an update will increase the legal certainty for economic operators as regards the regulatory framework for the preferential trade relations between the Parties.
- (2) Following the favourable assessment of the Working Group on Motor Vehicles and Parts of 11 November 2019, it has been confirmed to amend Appendix 2-C-1 by including UN Regulations 53, 85, 145 and 146 and to amend Appendix 2-C-2 by delisting UN Regulations 53 and 85.
- (3) The Parties have already completed their domestic legal procedures necessary for adoption of this Decision. They intend to exchange the diplomatic notes confirming this Decision within 15 days following its adoption,

HAS ADOPTED THIS DECISION:

Article 1

1. Appendix 2-C-1 to Annex 2-C to the Agreement is replaced by the text appearing in Annex 1 to this Decision.
2. Appendix 2-C-2 to Annex 2-C to the Agreement is replaced by the text appearing in Annex 2 to this Decision.

Article 2

This Decision is drawn up in duplicate. Article 1 and Annexes are drawn up in the authentic languages of the Agreement provided for in paragraph 1 of Article 23.8 of the Agreement, all texts being equally authentic.

Article 3

This Decision shall be confirmed by the exchange of diplomatic notes between the European Union and the Government of Japan in accordance with paragraph 3 of Article 23.2 of the Agreement. This Decision shall enter into force on the first day of the month following that exchange of diplomatic notes.

For the Joint Committee of the Agreement

Toshimitsu MOTEGI
Co-Chair [of Japan]

Valdis DOMBROVSKIS
Co-Chair [of the EU]

ANNEX 1

‘APPENDIX 2-C-1

UN REGULATIONS APPLIED BY BOTH PARTIES

Regulation No	Title
3	Uniform provisions concerning the approval of retro-reflecting devices for power-driven vehicles and their trailers
4	Uniform provisions concerning the approval of devices for the illumination of rear registration plates of power-driven vehicles and their trailers
6	Uniform provisions concerning the approval of direction indicators for power-driven vehicles and their trailers
7	Uniform provisions concerning the approval of front and rear position lamps, stop-lamps and end-outline marker lamps for motor vehicles (except motor cycles) and their trailers
10	Uniform provisions concerning the approval of vehicles with regard to electromagnetic compatibility
11	Uniform provisions concerning the approval of vehicles with regard to door latches and door retention components
12	Uniform provisions concerning the approval of vehicles with regard to the protection of the driver against the steering mechanism in the event of impact
13	Uniform provisions concerning the approval of vehicles of categories M, N and O with regard to braking
13-H	Uniform provisions concerning the approval of passenger cars with regard to braking
14	Uniform provisions concerning the approval of vehicles with regard to safety-belt anchorages, ISOFIX anchorages systems, ISOFIX top tether anchorages and i-Size seating positions
16	Uniform provisions concerning the approval of: I. Safety-belts, restraint systems, child restraint systems and ISOFIX child restraint systems for occupants of power-driven vehicles II. Vehicles equipped with safety-belts, safety-belt reminder, restraint systems, child restraint systems, ISOFIX child restraint systems and i-Size child restraint systems
17	Uniform provisions concerning the approval of vehicles with regard to the seats, their anchorages and any head restraints
19	Uniform provisions concerning the approval of power-driven vehicle front fog lamps
21	Uniform provisions concerning the approval of vehicles with regard to their interior fittings
23	Uniform provisions concerning the approval of reversing and manoeuvring lamps for power-driven vehicles and their trailers
25	Uniform provisions concerning the approval of head restraints (headrests), whether or not incorporated in vehicle seats
26	Uniform provisions concerning the approval of vehicles with regard to their external projections
27	Uniform provisions concerning the approval of advance warning triangles
28	Uniform provisions concerning the approval of audible warning devices and of motor vehicles with regard to their audible signals

Regulation No	Title
30	Uniform provisions concerning the approval of pneumatic tyres for motor vehicles and their trailers
34	Uniform provisions concerning the approval of vehicles with regard to the prevention of fire risks
37	Uniform provisions concerning the approval of filament lamps for use in approved lamp units of power-driven vehicles and of their trailers
38	Uniform provisions concerning the approval of rear fog lamps for power-driven vehicles and their trailers
39	Uniform provisions concerning the approval of vehicles with regard to the speedometer and odometer equipment including its installation
41	Uniform provisions concerning the approval of motor cycles with regard to noise
43	Uniform provisions concerning the approval of safety glazing materials and their installation on vehicles
44	Uniform provisions concerning the approval of restraining devices for child occupants of power-driven vehicles ("Child Restraint Systems")
45	Uniform provisions concerning the approval of headlamp cleaners, and of power-driven vehicles with regard to headlamp cleaners
46	Uniform provisions concerning the approval of devices for indirect vision and of motor vehicles with regard to the installation of these devices
48	Uniform provisions concerning the approval of vehicles with regard to the installation of lighting and light-signalling devices
50	Uniform provisions concerning the approval of front position lamps, rear position lamps, stop lamps, direction indicators and rear-registration-plate illuminating devices for vehicles of category L
51	Uniform provisions concerning the approval of motor vehicles having at least four wheels with regard to their sound emissions
53	Uniform provisions concerning the approval of category L3 vehicles with regard to the installation of lighting and light-signalling devices
54	Uniform provisions concerning the approval of pneumatic tyres for commercial vehicles and their trailers
58	Uniform provisions concerning the approval of: I. Rear underrun protective devices (RUPDs) II. Vehicles with regard to the installation of an RUPD of an approved type III. Vehicles with regard to their rear underrun protection (RUP)
60	Uniform provisions concerning the approval of two-wheeled motor cycles and mopeds with regard to driver-operated controls including the identification of controls, tell-tales and indicators
62	Uniform provisions concerning the approval of power-driven vehicles with handlebars with regard to their protection against unauthorized use
64	Uniform provisions concerning the approval of vehicles with regard to their equipment which may include: a temporary-use spare unit, run-flat tyres and/or a run-flat system, and/or a tyre pressure monitoring system
66	Uniform provisions concerning the approval of large passenger vehicles with regard to the strength of their superstructure

Regulation No	Title
70	Uniform provisions concerning the approval of rear marking plates for heavy and long vehicles
75	Uniform provisions concerning the approval of pneumatic tyres for L-category vehicles
77	Uniform provisions concerning the approval of parking lamps for power-driven vehicles
78	Uniform provisions concerning the approval of vehicles of categories L1, L2, L3, L4 and L5 with regard to braking
79	Uniform provisions concerning the approval of vehicles with regard to steering equipment
80	Uniform provisions concerning the approval of seats of large passenger vehicles and of these vehicles with regard to the strength of the seats and their anchorages
81	Uniform provisions concerning the approval of rear-view mirrors of two-wheeled power-driven vehicles with or without side car, with regard to the mounting of rear-view mirrors on handlebars
85	Uniform provisions concerning the approval of internal combustion engines or electric drive trains intended for the propulsion of motor vehicles of categories M and N with regard to the measurement of net power and the maximum 30 minutes power of electric drive trains
87	Uniform provisions concerning the approval of daytime running lamps for power-driven vehicles
91	Uniform provisions concerning the approval of side-marker lamps for motor vehicles and their trailers
93	Uniform provisions concerning the approval of: I. Front underrun protective devices (FUPDs) II. Vehicles with regard to the installation of an FUPD of an approved type III. Vehicles with regard to their front underrun protection (FUP)
94	Uniform provisions concerning the approval of vehicles with regard to the protection of the occupants in the event of a frontal collision
95	Uniform provisions concerning the approval of vehicles with regard to the protection of the occupants in the event of a lateral collision
98	Uniform provisions concerning the approval of motor vehicle headlamps equipped with gas-discharge light sources
99	Uniform provisions concerning the approval of gas-discharge light sources for use in approved gas-discharge lamp units of power-driven vehicles
100	Uniform provisions concerning the approval of vehicles with regard to specific requirements for the electric power train
104	Uniform provisions concerning the approval of retro-reflective markings for vehicles of category M, N and O
110	Uniform provisions concerning the approval of: I. Specific components of motor vehicles using compressed natural gas (CNG) and/or liquefied natural gas (LNG) in their propulsion system II. Vehicles with regard to the installation of specific components of an approved type for the use of compressed natural gas (CNG) and/or liquefied natural gas (LNG) in their propulsion system
112	Uniform provisions concerning the approval of motor vehicle headlamps emitting an asymmetrical passing-beam or a driving-beam or both and equipped with filament lamps and/or light-emitting diode (LED) modules

Regulation No	Title
113	Uniform provisions concerning the approval of motor vehicle headlamps emitting a symmetrical passing-beam or a driving-beam or both and equipped with filament, gas-discharge light sources or LED modules
116	Uniform provisions concerning the protection of motor vehicles against unauthorized use
117	Uniform provisions concerning the approval of tyres with regard to rolling sound emissions and/or to adhesion on wet surfaces and/or to rolling resistance
119	Uniform provisions concerning the approval of cornering lamps for power-driven vehicles
121	Uniform provisions concerning the approval of vehicles with regard to the location and identification of hand controls, tell-tales and indicators
123	Uniform provisions concerning the approval of adaptive front-lighting systems (AFS) for motor vehicles
125	Uniform provisions concerning the approval of motor vehicles with regard to the forward field of vision of the motor vehicle driver
127	Uniform provisions concerning the approval of motor vehicles with regard to their pedestrian safety performance
128	Uniform provisions concerning the approval of light emitting diode (LED) light sources for use in approved lamp units on power-driven vehicles and their trailers
129	Uniform provisions concerning the approval of Enhanced Child Restraint Systems used on board of motor vehicles (ECRS)
130	Uniform provisions concerning the approval of motor vehicles with regard to the Lane Departure Warning System (LDWS)
131	Uniform provisions concerning the approval of motor vehicles with regard to the Advanced Emergency Braking Systems (AEBS)
134	Uniform provisions concerning the approval of motor vehicles and their components with regard to the safety-related performance of Hydrogen-Fuelled Vehicles (HFCV) ⁽¹⁾
135	Uniform provisions concerning the approval of vehicles with regard to their Pole Side Impact performance (PSI)
136	Uniform provisions concerning the approval of vehicles of category L with regard to specific requirements for the electric power train
137	Uniform provisions concerning the approval of passenger cars in the event of a frontal collision with focus on the restraint system
138	Uniform provisions concerning the approval of Quiet Road Transport Vehicles with regard to their reduced audibility
139	Uniform provisions concerning the approval of passenger cars with regard to Brake Assist Systems (BAS)
140	Uniform provisions concerning the approval of passenger cars with regard to Electronic Stability Control (ESC) systems
141	Uniform provisions concerning the approval of vehicles with regard to their Tyre Pressure Monitoring Systems (TPMS)
142	Uniform provisions concerning the approval of motor vehicles with regard to the installation of their tyres

Regulation No	Title
145	Uniform provisions concerning the approval of vehicles with regard to ISOFIX anchorage systems, ISOFIX top tether anchorages and i-Size seating positions
146	Uniform provisions concerning the approval of motor vehicles and their components with regard to the safety-related performance of hydrogen-fuelled vehicles of categories L1, L2, L3, L4 and L5'

(¹) For Japan, to the extent that the containers are marked in accordance with Article 46 of the High Pressure Gas Safety Act (Law No.204 of 1951) of Japan, the conditions to approve a vehicle type that has been approved by a type approval authority of the European Union in accordance with UN Regulation No.134 shall be as follows:

- (a) at the time of application pursuant to the High Pressure Gas Safety Act of Japan, the manufacturer or its legal representative in Japan shall present that:
 - (i) the material of the containers is equivalent to SUS F 316L specified under JIS (Japan Industrial Standard) G 3214; for the purpose of this subparagraph, the compliance with DIN1.4435 as of the date of entry into force of this Agreement is considered as fulfilling of this requirement;
 - (ii) "the Nickel Equivalent" (mass %) is more than 28.5; for the purposes of this subparagraph, "Nickel Equivalent" (mass %) is defined as: "12.6[C]+0.35[Si]+1.05[Mn]+[Ni]+0.65[Cr]+0.98[Mo]" and shall be proved by the Material Mill Sheet; and
 - (iii) the test result for "Reduction of Area" is more than 75 %; in case the test result is between 72 % and 75 %, the application will be examined taking into account "the Nickel Equivalent"; and
- (b) individual vehicles are subject to a 2-year periodic inspection for the hydrogen storage system in accordance with Articles 49 and 49-4 of the High Pressure Gas Safety Act of Japan and the system shall be removed after 15 years from the date of production.

This footnote shall cease to have effect at the time when both Parties have completed the work in the Phase 2 of GTR No. 13 Global technical regulation on hydrogen and fuel cell vehicles and have applied the corresponding UN Regulation under the 1958 Agreement.

ANNEX 2

‘APPENDIX 2-C-2

UN REGULATIONS APPLIED BY ONE OF THE PARTIES AND NOT YET CONSIDERED BY THE OTHER PARTY

Regulation No	Title	Date of application by the other Party ⁽¹⁾
73	Uniform provisions concerning the approval of: I. Vehicles with regard to their lateral protection devices (LPD) II. Lateral protection devices (LPD) III. Vehicles with regard to the installation of LPD of an approved type according to Part II of this Regulation	
126	Uniform provisions concerning the approval of partitioning systems to protect passengers against displaced luggage, supplied as non-original vehicle equipment’	

⁽¹⁾ Dates to be agreed in accordance with paragraph 2 of Article 5 of this Annex.

CORRIGENDA

Corrigendum to Protocol to the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America, on the other, to take account of the accession of the Republic of Croatia to the European Union

(Official Journal of the European Union L 441 of 30 December 2020)

This publication is to be considered null and void.

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