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 ([3]), 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 ([4]), 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.

([3]) Decision of the Supreme Council of the Republic of Estonia, RT 1992, 36, 475.

([4]) 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 +/– 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 ([5]). The rental fees presented below are statistical averages.

([5]) 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 Mousten 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]) (Riigivaraseadus) 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 m^3 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/m^3, alder and aspen logs between 29 and 46 EUR/m^3, and wood for heating between 16 and 31 EUR/m^3. 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/m^3. 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 an 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 or 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 Mousten 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 country 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).