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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2020/550

of 12 February 2020

amending Annexes II and IV to Regulation (EU) No 978/2012 of the European Parliament and of the Council as regards the temporary withdrawal of the arrangements referred to in Article 1(2) of Regulation (EU) No 978/2012 in respect of certain products originating in the Kingdom of Cambodia

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalized tariff preferences and repealing Council Regulation (EC) No 732/2008 ⁽¹⁾, and in particular Article 19(10) thereof,

Whereas:

1. PROCEDURE

- (1) The Kingdom of Cambodia ('Cambodia') benefits from tariff preferences provided under the special arrangement for the least-developed countries – Everything But Arms ('EBA') – referred to in Article 1(2)(c) of Regulation (EU) No 978/2012 (the 'GSP Regulation'). It is also listed as a beneficiary country of the general arrangement under Article 1(2)(a) of the GSP Regulation. In accordance with Article 18(1) of the GSP Regulation, the special arrangement for the least-developed countries consists in the suspension of the Common Customs Tariff duties on all products listed in Chapters 1 to 97 of the Combined Nomenclature and originating in Cambodia, except those listed in Chapter 93, namely arms and ammunition.
- (2) Pursuant to Article 19(1)(a) of the GSP Regulation, the preferential arrangements referred to in Article 1(2) of the GSP Regulation may be withdrawn temporarily in respect of all or certain products originating in a beneficiary country, for reasons of serious and systematic violation of principles laid down in the conventions listed in Part A of Annex VIII to the GSP Regulation (the 'core human and labour rights UN/ILO conventions').
- (3) On 11 February 2019, the Commission adopted an Implementing Decision including an Annex (the 'Notice of Initiation') ⁽²⁾ initiating, in accordance with Article 19(3) of the GSP Regulation, the procedure for the temporary withdrawal of tariff preferences from Cambodia (the 'temporary withdrawal procedure'). On the same day, the Commission informed the European Parliament and the Council of that Implementing Decision.
- (4) The elements available to the Commission at that time pointed to the existence of sufficient grounds justifying the initiation of the temporary withdrawal procedure. In particular, recital (3) of the Implementing Decision and point (5) of the Notice of Initiation referred to elements indicating the existence of serious and systematic violations by Cambodia of principles laid down in the following four core human and labour rights UN/ILO conventions:

⁽¹⁾ OJ L 303, 31.10.2012, p. 1.

⁽²⁾ OJ C 55, 12.2.2019, p. 11.

- International Covenant on Civil and Political Rights (1966) ('ICCPR');
 - Convention concerning Freedom of Association and Protection of the Right to Organise, No 87 (1948) ('ILO Convention 87');
 - Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, No 98 (1949) ('ILO Convention 98'); and
 - International Covenant on Economic Social and Cultural Rights (1966) ('ICESCR').
- (5) In the Notice of Initiation, the Commission invited Cambodia and third parties to make their views known to the Commission. Thirteen third parties registered within the time limit set in the Notice of Initiation and submitted written observations to the Commission.
- (6) Following the initiation of the temporary withdrawal procedure, the Commission monitored and evaluated the implementation by Cambodia of the four conventions listed in the Notice of Initiation. In accordance with Article 19(4)(b) of the GSP Regulation, the monitoring and evaluation period ended on 12 August 2019.
- (7) The Commission sought all necessary information in accordance with Article 19(6) of the GSP Regulation, including the available assessments of the relevant monitoring bodies and the views of Cambodia. The Commission conducted a monitoring mission to Cambodia in June 2019.
- (8) During the monitoring and evaluation period, the Commission provided Cambodia with every opportunity to cooperate, and submit views and comments, and be heard. For instance, on 24 July 2019, the Commission invited Cambodia to submit in writing its position on the findings that led to the launch of the temporary withdrawal procedure. Cambodia replied to the Commission on 12 August 2019, contesting the grounds for the Commission's decision to open the temporary withdrawal procedure. In its reply, Cambodia also highlighted a number of remedial actions planned or undertaken, mostly before the initiation of the temporary withdrawal procedure.
- (9) On 12 November 2019, the Commission submitted to Cambodia, in accordance with Article 19(7) of the GSP Regulation, a report on its finding and conclusions (the 'Report'). The Report was based on the body of evidence gathered by the Commission up to 31 October 2019 concerning the respect of the principles laid down in the four core human and labour rights UN/ILO conventions, including evidence and information submitted by Cambodia and by the third parties to the procedure.
- (10) Cambodia submitted its observations on the Report on 12 December 2019.
- (11) This Delegated Regulation is based on the findings contained in the Report and its underlying evidence, subsequent evaluations and assessments in light of Cambodia's Response and facts and developments occurring after 12 December 2019.

2. SERIOUS AND SYSTEMATIC VIOLATIONS OF PRINCIPLES LAID DOWN IN THE ICCPR

2.1. *The Right to Political Participation (Article 25 of the ICCPR)*

- (12) Article 25 of the ICCPR provides that every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 of the ICCPR and without unreasonable restrictions, to:
- (a) take part in the conduct of public affairs, directly or through freely chosen representatives;
 - (b) vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
 - (c) have access, on general terms of equality, to public service in their country.

2.1.1. *Findings*

- (13) Cambodia has taken a series of repressive actions against the main opposition party, the Cambodian National Rescue Party ('CNRP'), curtailing political participation and electoral rights in the country. These actions included in particular amendments to the Law on Political Parties ('LPP'), the arrest of CNRP's president Kem Sokha and the court-ordered dissolution of the CNRP.

- (14) In March and July 2017, the Cambodian National Assembly enacted several amendments to the LPP that made it illegal for anyone with a criminal conviction to lead a political party. The amended LPP also granted the Ministry of Interior broad discretion to suspend activities of political parties and to file motions of dissolution of a party, for decision by the Supreme Court. In October 2017, the National Assembly passed additional amendments to a range of electoral laws that set out the process for reallocating seat won by a dissolved party.
- (15) On 3 September 2017, CNRP leader Kem Sokha was arrested on charges of treason and conspiracy to topple the Cambodian government with the assistance of a foreign power ⁽³⁾.
- (16) After more than a year in pre-trial detention, Kem Sokha was released on restricted bail on 10 September 2018 and put under judicial supervision. On 10 November 2019, Kem Sokha was released from judicial supervision. However, he remained banned from engaging in political activities pending the outcome of his trial ⁽⁴⁾.
- (17) On 16 November 2017, the Supreme Court of Cambodia ordered the dissolution of the CNRP and banned 118 of its senior officials from political activity for five years. The Supreme Court's ruling was based in particular on the amended provisions of Article 44 of the LPP, which allows the Supreme Court to suspend for five years, or dissolve, a political party if it violates Articles 6(2) and 7 of the LPP. The dissolution of the CNRP by the Supreme Court was founded in part on the same allegations as those used by the investigating judge in respect of the pending case against Kem Sokha ⁽⁵⁾.
- (18) The dissolution of the CNRP also led to the removal from their positions of 5,007 CNRP commune/local councillors elected in June 2017. The CNRP members of the National Assembly were replaced by unelected individuals. In the subsequent indirect elections of the Senate on 25 February 2018, the ruling party, the Cambodian People's Party ('CPP'), won all contested seats ⁽⁶⁾. The dissolution of the CNRP left the country without any credible opposition ahead of the 29 July 2018 national elections in which the CPP won all 125 seats in the National Assembly, thereby *de facto* creating a one-party State with no parliamentary opposition.

2.1.2. *Position of Cambodia*

- (19) Cambodia argues that the amended LPP applies indiscriminately to every political party, bears all the basic requirements that any democratic country should adhere to, and is aimed at preventing abuses that are not in accordance with fundamental democratic principles.
- (20) Cambodia justifies the arrest of Kem Sokha under Article 443 of the Criminal Code, which condemns the crime of conspiracy with a foreign power, and relies on alleged proof of Mr Kem Sokha's conspiracy to overthrow the government. ⁽⁷⁾ It argues that, as president of the CNRP, Mr Sokha's act of treason implicated his party, leading to the forced dissolution.
- (21) Moreover, Cambodia argues that the decision of the Supreme Court of 16 November 2017 ordering the dissolution of the CNRP was the decision of a sovereign state, and that the enforcement of domestic judicial decisions is an internal affair of a sovereign state upholding the rule of law.

⁽³⁾ These charges were based on a 2013 video recording in which Kem Sokha discussed a strategy to win votes with the assistance of foreign experts. See UA KHM 5/2017, 8 September 2017. See also A/HRC/39/73/Add.1, 7 September 2018.

⁽⁴⁾ On 9 December 2019, a Cambodian Court announced the start of the trial of Kem Sokha on 15 January 2020.

⁽⁵⁾ A/HRC/39/73/Add.1, para. 20.

⁽⁶⁾ 58 out of 62 Senate seats are indirectly elected by members of the Commune Councils. An additional four Senate seats are subject to nomination by the King and the National Assembly.

⁽⁷⁾ Cambodia argues that Kem Sokha's acts were demonstrated in a video in which he allegedly admitted that he had been acting under the order of a foreign power and that he has set an ultimate goal of changing the top Government leader.

- (22) In relation to the 29 July 2018 elections, Cambodia stresses that the registration of 20 political parties and the participation of 6.956.900 voters is a clear evidence that the amendments to the LPP and the consequent redistribution of seats did not deprive Cambodians of their right to take part in the conduct of political affairs. Therefore, the notion of a breach of Article 25 of the ICCPR is not justified.

2.1.3. Assessment

Amendments to the Law on Political Parties (LPP)

- (23) The 2017 amendments to the LPP include provisions allowing for wide discretion as to the dissolution of political parties and the banning of party leaders from political activities indefinitely without due process ⁽⁸⁾.
- (24) Under Article 38 of the LPP, the Ministry of Interior has extensive decision-making powers over political parties and *de facto* acts as their administrator. For instance, it can decide to suspend the activities of political parties and can file motions for their dissolution with the Supreme Court. As Article 38 of the LPP does not provide clear and transparent criteria for such motions, the Ministry of Interior enjoys broad discretion to propose the dissolution of a party.
- (25) According to the Office of the United Nations High Commissioner for Human Rights ('OHCHR') in Cambodia, the designation of the Ministry of Interior as the administrator of political parties is '*contrary to international standards that require regulatory bodies that are independent of the executive branch to ensure a level political playing field.*' ⁽⁹⁾ Furthermore, as noted by the UN Special Rapporteur, the LPP amendments and the consequent redistribution of seats deprived '*millions of Cambodians of their right to political participation. For those who voted CNRP in constituencies which CNRP won, the candidates they voted for in the 2013 National Assembly elections and the 2017 commune elections have been replaced by different people representing different political parties, which in turn has had an effect on the election of senators. This constitutes a clear violation of the right for Cambodians to take part in the conduct of political affairs, which envisages the right to be represented through chosen representatives*' ⁽¹⁰⁾.
- (26) In January 2019 Cambodia amended Article 45 of the LPP by introducing the possibility for individuals banned from political activities to seek the restoration of their political rights by the King, upon request to the Prime Minister. However, this amendment does not allow the full reinstatement of the political rights of the banned individuals, as they cannot effectively resume their political activities as long as the CNRP as a whole remains dissolved. In addition, the decision to restore their political rights rests with their political opponents rather than an independent body. Finally, the amendment of Article 45 of the LPP provides no solution to the removal of the 5,007 elected CNRP commune councillors ⁽¹¹⁾.
- (27) In view of the above, the Commission finds that the LPP, as amended in 2017, contains provisions amounting to a violation of the principles set out in Article 25 of the ICCPR.

Dissolution of the CNRP and arrest of Kem Sokha

- (28) Cambodia argues that the reason for dissolving the CNRP was that its leader, Kem Sokha, committed the crime of conspiring with a foreign power. However, the Commission notes that the CNRP was dissolved before the trial of Kem Sokha had even started. It is noted that the UN Special Rapporteur has raised serious concerns about the evidentiary basis for the Supreme Court's decision to dissolve the CNRP ⁽¹²⁾ and the severity of the accusation based on such evidence. ⁽¹³⁾

⁽⁸⁾ See *Joint UNCT Cambodia Report in the context of Cambodia's third UPR cycle*, para. 11

⁽⁹⁾ OHCHR, *A human rights analysis of the amended law on political parties*, 28 March 2017.

⁽¹⁰⁾ Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Cambodia, A/HRC/39/73, para.76 (2018).

⁽¹¹⁾ A/HRC/42/60, para. 7.

⁽¹²⁾ A/HRC/39/73/Add.1, para. 20.

⁽¹³⁾ UA KHM 5/2017, 8 September 2017.

- (29) According to the United Nations Working Group on Arbitrary Detention ('UNWGAD'), Kem Sokha's deprivation of liberty was politically motivated ⁽¹⁴⁾ and resulted from the exercise of his rights to freedom of opinion and expression, as well as the right to take part in the government of his country and the conduct of public affairs. Accordingly, it was contrary to, inter alia, Articles 19 and 25 of the ICCPR ⁽¹⁵⁾. Equally, the UN Special Rapporteur expressed the concern that the arrest of Kem Sokha was politically motivated ahead of the scheduled 2018 general election. ⁽¹⁶⁾
- (30) The dissolution of the CNRP had the effect of restricting the right to take part in the conduct of public affairs of 118 of its members, 55 CNRP members of the National Assembly and of 5.007 elected local and commune councillors who were removed from office. As noted by the UN Special Rapporteur, the CNRP dissolution and the ban from political activities of its members call into question the genuineness of the 29 July 2018 general election. ⁽¹⁷⁾
- (31) UN monitoring bodies have unanimously expressed concerns about this situation, noting that the redistribution of CNRP seats to other parties, in particular, at the communal level, deprives Cambodians of their rights of political participation. ⁽¹⁸⁾ The 2018 report of the UN Special Rapporteur also concludes that the regression of political rights in Cambodia, including the amendments to the Constitution to introduce a *lèse-majesté* law, constitute 'grave' developments, aimed at repressing dissenting voices and curtailing fundamental freedoms. ⁽¹⁹⁾
- (32) Since the launch of the temporary withdrawal procedure in February 2019, there has been little progress on the situation of political rights in Cambodia. Cambodia's political landscape remains dominated by the repression of political rights. The CNRP remains banned, the political rights of supporters and members of CNRP continue to be denied and the CPP has consolidated its overwhelming dominance over State institutions. ⁽²⁰⁾ The positions of CNRP's commune chiefs and commune councillors were almost entirely transferred to unelected members of the CPP ⁽²¹⁾. Although the opposition leader Kem Sokha was released from judicial supervision on 10 November 2019, his case has not been closed and he still faces criminal charges. In addition, he is banned from engaging in any political activities.

2.1.4. *Conclusions on Article 25 of the ICCPR*

- (33) In the light of all the above considerations, the Commission finds that the actions taken by Cambodia since 2017, notably the amendments of the LPP, the dissolution of the CNRP and the subsequent redistribution of CNRP's seats in the National Assembly and in local councils, have a strong negative impact on democracy, political participation and pluralism in Cambodia. These actions point to a politically motivated scheme consisting of legislative, judicial and administrative actions designed to curtail political participation and electoral rights, in particular ahead of the July 2018 general election. These actions have impeded the full enjoyment of political rights by Cambodians, including the right to take part in the conduct of public affairs, to vote and to be elected at genuine periodical elections and to have access, on general terms of equality, to public service in their country, as provided for in Article 25 of the ICCPR.
- (34) The Commission concludes that the nature of the rights infringed, the duration, the scale and the impact of the violations found establish the existence of serious and systematic violations by Cambodia of the principles laid down in Article 25 of the ICCPR, within the meaning of Article 19(1)(a) of the GSP Regulation.

2.2. *The Right to Freedom of Expression (Article 19 of the ICCPR)*

- (35) Article 19 of the ICCPR provides that:

⁽¹⁴⁾ United Nations Human Rights Council, Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, 17–26 April 2018, A/HRC/WGAD/2018/9, point 57.

⁽¹⁵⁾ A/HRC/WGAD/2018/9, points 47 and 61.

⁽¹⁶⁾ UA KHM 5/2017, 8 September 2018.

⁽¹⁷⁾ A/HRC/39/73/Add.1, 15 August 2018, para 87.

⁽¹⁸⁾ Id., para. 23 and para. 87.

⁽¹⁹⁾ A/HRC/39/73, para 89.

⁽²⁰⁾ See also A/HRC/42/60, 27 August 2019, para. 71.

⁽²¹⁾ Id., para. 5.

‘1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his or her choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and necessary:

(a) for the respect of the rights or reputations of others,

(b) for the protection of national security or of public order (*ordre public*), or of public health or morals.’

- (36) In its general comment No 34 to the ICCPR, the Human Rights Committee (HRC) held that freedom of opinion and expression are closely interrelated rights, they are ‘essential’ to any society and constitute the fundamentals of a democratic and free society ⁽²³⁾. They also imply the existence of a free press and that other media are able to comment on public issues without censorship or restraint, and to inform the public opinion.

2.2.1. Findings

- (37) Cambodia’s laws contain a number of provisions that contravene Cambodia’s obligations under Article 19 of the ICCPR, notably through broadly and vaguely worded provisions which allow the Cambodian authorities to exercise a wide margin of discretion in implementing those laws and regulations and to bring charges for offences related to the exercise of the freedom of expression. These laws include: the 2018 amendments to the Cambodian Constitution, the lèse-majesté clause in the Criminal Code, the Law on the Press, the Electoral Law, the Telecommunications Law, the Law on Associations and Non-Governmental Organizations (LANGO), the Law on Political Parties, the Law on Trade Unions and Prakas No 170 on Publication Controls of Website and Social Media Processing via internet in the Kingdom of Cambodia.
- (38) In addition, the Commission notes the situation of journalists facing arrests, detention, charges and conviction, the closure of the Cambodia Daily newspaper following a tax audit, the closure of the local operations of Radio Free Asia and Voice of America, as well as the closure of other radio frequencies. Journalists have been charged or detained for no apparent reason other than that they had reportedly spoken out against the Cambodian government or engaged in advocacy activities.
- (39) This situation was also noted with concern by several international monitoring bodies. The UN Special Rapporteur in her End of Mission Statement of 5 May 2019 on the situation of human rights in Cambodia, called on Cambodia ‘to increase the space for a free press, including space for independent journalists to operate’. The 2019 report of the UN Working Group on the Universal Periodic Review (UPR) urged Cambodia to: release immediately from custody any individual detained for the peaceful exercise of expression and assembly; protect journalists, human rights defenders, members of the political opposition, and trade union members from harassment, arbitrary arrest and physical attacks; guarantee a free civic space, both online and offline, for free expression without fear of prosecution under the Criminal Code and the Law on Telecommunications. ⁽²³⁾ On 18 April 2019, Cambodia accepted most of those recommendations..
- (40) The 2019 surge in legal actions against former CNRP members illustrates the serious and systematic use and misuse of laws to target, intimidate and harass individuals for exercising their fundamental freedoms, notably the right to hold opinions without interference and the right to freedom of expression. Cambodian citizens raising dissenting voices are being silenced and deprived of their right to free expression, increasingly so on social media and online platforms. They are threatened, intimidated or face criminal charges for any dissent expressed, including through the use of the lèse-majesté provision of the Criminal Code introduced over one year ago. ⁽²⁴⁾

⁽²³⁾ UN Human Rights Committee (HRC), *General Comment No 34, Article 19, Freedoms of opinion and expression*, CCPR/C/GC/34, 11 (12 September 2011).

⁽²³⁾ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Cambodia*, A/HRC/41/17, pp. 11 et seq. inter alia recommendations 110.12, 110.27, 110.29, 110.81, 110.83, 110.85, 110.87, 110.91, 110.93, 110.94, 110.96, 110.98 and 110.99 (5 April 2019).

⁽²⁴⁾ See in this regard statement by the UN Special Rapporteur of 8 November 2019.

2.2.2. *Position of Cambodia*

- (41) Cambodia takes the view that the above-described actions against journalists and media are justified by the application of its domestic laws and regulations on taxation and broadcasting licenses. It emphasizes the large number of media organizations currently registered and operating in Cambodia. It also notes that it has authorized several radio stations to resume operations and granted permissions to radio broadcasters to provide air time.
- (42) In addition, Cambodia refers to recent legislative developments, including the establishment of a commission to assess possible amendments to the Law on the Press and ongoing work at inter-ministerial level on a draft Law on Access to Information.

2.2.3. *Assessment*

- (43) The use of laws to restrict the right to freedom of expression is a matter of grave concern. On 19 June 2019, UN experts including the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, raised concerns about the use of criminal law to target free speech, both offline and online, and reminded Cambodia that the right to freedom of expression is one of the essential foundations for a democratic and just society and that restrictions on freedom of expression must be limited and strictly defined. Moreover, legal actions by the Cambodian authorities against individuals for having merely issued statements of support for political leaders are not permitted under Article 19(3) of the ICCPR and therefore constitute unjustified restrictions. The position of Cambodia, in particular its description of the media landscape in the country, stands in stark contrast to its ranking at position 143 on the World Press Freedom Index. On 8 November 2019, the UN Special Rapporteur on the situation of human rights in Cambodia reminded Cambodia that arrests based on the exercise of the freedoms of opinion and expression through political discourse and commenting on public affairs, are not permitted.
- (44) Consistent with numerous available reports of civil society and international human rights bodies, the Commission also finds that Cambodia has curtailed the right to freedom of expression through the use of laws and judicial and administrative actions, in particular actions against journalists, press and other media, NGOs and individuals including human rights defenders. Cambodian actions to remedy these shortcomings have not materialised, nor has Cambodia taken steps to effectively implement the UPR recommendations – despite having accepted them – concerning the independence of the media and the freedom of expression of journalists ⁽²⁵⁾.
- (45) The fact that Cambodia committed to review and/or amend a number of its laws, including at the occasion of the 2019 UPR, and has taken a number of administrative steps towards such review and/or amendments since the initiation of the temporary withdrawal procedure, has so far not resulted in tangible progress to bring Cambodia's laws into compliance with its international human rights obligations, in particular Article 19 of the ICCPR.
- (46) The Commission recalls that, whilst the right to freedom of expression may be subject to certain restrictions, such restrictions have to satisfy the conditions set out in Article 19(3) of the ICCPR, including the condition that any restriction be necessary in a democratic society and proportionate. However, the Commission finds that Cambodia has not sufficiently demonstrated that the restrictions on the right of freedom of expression set out in its legal framework and its implementation meet the conditions set out in Article 19 of the ICCPR.

2.2.4. *Conclusions on Article 19 of the ICCPR*

- (47) Having regard to the nature of the rights infringed, the duration, the scale and the impact of the violations, the Commission finds that Cambodia's use of its law and its judicial and administrative actions to restrict the right to freedom of expression and its failure to take the necessary steps to ensure a free civic space, amount to a serious and systemic violation of the principles laid down in Article 19 of the ICCPR, within the meaning of Article 19(1)(a) of the GSP Regulation.

⁽²⁵⁾ A/HRC/41/17/Add. 1.

2.3. *The Right to Freedom of Association and of Peaceful Assembly (Articles 21 and 22 of the ICCPR)*

- (48) Article 21 of the ICCPR provides that the right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.
- (49) Article 22 of the ICCPR provides that:
- '1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of their interests.
 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
 3. Nothing in this Article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning freedom of association and protection of the right to organize, to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.'

2.3.1. *Findings*

- (50) Cambodia has in force a Law on Non-Governmental Organizations (the 'LANGO'), which imposes a number of restrictions on the registration of associations and on their activities, as well as extensive reporting obligations. More specifically, Article 8 of the LANGO contains broad grounds for restricting the registration of civil society organisations ('CSO'). Article 9 of the LANGO requires them to register in order to be allowed to conduct any activity. Article 25 of the LANGO, combined with its Article 30, imposes reporting requirements, some of which are unclear, placing on CSO restrictions that go beyond those permissible under Article 22(2) of the ICCPR. Moreover, the neutrality requirement ⁽²⁶⁾ set out in Article 24 of the LANGO is not defined and its application is unclear. Finally, the LANGO allows for the suspension or delisting of a CSO for failure to abide by its own statute even when such failure does not constitute a crime under Cambodian law.
- (51) In addition to the vagueness and lack of clarity of its legal framework under the LANGO, Cambodia has been taking a number of actions to repress the exercise of the freedom of association. In particular, arrests and detention of key civil society, land right and environmental activists have, despite suspended sentences or royal pardon, resulted in civil society space shrinking ⁽²⁷⁾. Notwithstanding the fact that the three-day advance notice for civil society events was repealed in November 2018, the Commission received accounts from CSOs, including during a June 2019 mission to Cambodia, that they continue to experience intrusive monitoring and harassment by the local police, the military and the judiciary. Some CSOs reported government monitoring of their family members.
- (52) This situation is confirmed by the conclusions and recommendations of the July 2019 report on the role and achievement of the OHCHR in Cambodia ⁽²⁸⁾, where the OHCHR confirms reports of close monitoring of CSO activities by the police and calls upon Cambodia to broaden the space for CSOs. Concerns are also reflected in the 2019 Universal Periodic Review ('UPR') report. Cambodia accepted the UPR recommendations encouraging the country to cease all kinds of harassment, intimidation, use of force and arbitrary interference with the rights to freedom of association and peaceful assembly. ⁽²⁹⁾

⁽²⁶⁾ Article 24 of the LANGO provides that CSOs shall maintain their neutrality toward political parties in the Kingdom of Cambodia.

⁽²⁷⁾ A/HRC/39/73/Add.1, page 9.

⁽²⁸⁾ OHCHR (31 July 2019) – The annual report of OHCHR on its work in Cambodia

⁽²⁹⁾ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Cambodia*, A/HRC/41/17, acronyms added. In particular the UPR recommends to: amend the LANGO to bring it into line with the States' obligations under ICCPR and establish a safe and enabling environment for civil society and trade unions. (inter alia: Recommendations 110.12, 110.25 and 110.102); protect NGOs and ensure that administrative provisions of the LANGO are not used to close down, suspend or otherwise negatively affect NGOs (recommendation 110.28); take all measures to protect and support journalists, human rights defenders, trade union workers, land and environmental activists and other civil society workers (recommendation 110.85); and take the measures necessary to ensure that the right to freedom of assembly and association is not hindered by arbitrary restrictions and/or excessive use of force (recommendation 110.107).

2.3.2. *Position of Cambodia*

- (53) Cambodia justifies its actions on the grounds that local authorities need to ensure security and public order, and that the CSOs in question were undertaking ultra vires activities or conveying messages that violated the law.
- (54) Cambodia confirms its commitment to review the LANGO and states that consultations with CSOs are underway and that in any democratic country such a process requires time.
- (55) Cambodia adds that the preparatory work on a draft Access to Information Law is taking place in full cooperation with UN organizations such as the OHCHR and Unesco office in Phnom Penh. Cambodia has furthermore extended deadlines for tax registration and tax obligations for CSOs.

2.3.3. *Assessment*

- (56) Concerns about the LANGO and its implications on the ability of CSOs and individuals to act in defence of human rights and to promote transparency and accountability were expressed by the OHCHR already in 2015, and by the OHCHR spokesperson in August 2017. The shortcomings of the LANGO were raised by the Commission and the European External Action Service (EEAS), including during the 2018 monitoring mission, and by the international community, e.g. in the 2019 UPR and by the UN Secretary-General and UN Special Rapporteur.
- (57) Despite the fact that Cambodia has taken certain positive steps, such as initiating a process to review the LANGO, holding dialogues with CSOs, and repealing the requirement of a three-day advance notice for civil society events, the Commission considers, based on its findings, that those steps are insufficient to overcome the existing shortcomings. In particular, Cambodia's legal framework remains unchanged and there is no concrete implementation of policies and statements regarding the promotion and protection of civil society space. Moreover, reports about monitoring, surveillance, harassment, arrests and detention of civil society representatives and activists continue ⁽³⁰⁾.
- (58) On 3 December 2018, Cambodia issued a statement committing itself to promoting genuine partnership with CSOs. Yet in July 2019, the UN Secretary-General continued to urge Cambodia to strengthen guarantees with respect to the unhindered work of CSOs and by consolidating and broadening the space for these organizations to operate. The UN Secretary-General also highlighted the importance of the review of LANGO in this regard ⁽³¹⁾.
- (59) Based on international human rights law and Human Rights Committee (HRC) jurisprudence, the Commission finds that Articles 8 and Article 25 together with Article 30 of the LANGO violate Article 22(2) of the ICCPR. Articles 9, 20 and 24 of the LANGO also violate Article 22(2) of the ICCPR due the serious concerns regarding their application. ⁽³²⁾
- (60) More specifically, the Commission finds that the grounds for restricting the registration of associations under Article 8 of the LANGO go beyond what is permitted under Article 22(2) of the ICCPR. The Commission also finds that Article 25 of the LANGO combined with its Article 30, imposes reporting requirements on CSOs going beyond those permissible under Article 22(2) of the ICCPR. In addition the vague formulation and unclear application of the neutrality requirement set out in Article 24 of the LANGO do not meet the requirements of Article 22(2) of the ICCPR.

⁽³⁰⁾ See in this regard the statement by the UN Special Rapporteur of 8 November 2019 calling on the government to respect the rights to freedom of opinion, expression and assembly. See also the joint civil society letter to the Prime Minister of Cambodia of 8 December 2019 expressing alarm at the repression that results in silencing independent and critical opinions and at the current environment for labour rights advocates, trade union leaders and civil society activists.

⁽³¹⁾ A/HRC/42/31 of 31 July 2019.

⁽³²⁾ An analysis of the LANGO with respect to human rights standards is available on the Website of the Cambodia Office of the OHCHR since 2015. See for instance the OHCHR's conclusions on pages 17 and 18 that Article 24 infringes on freedom of expression and other human rights and that Article 25, combined with Article 30, place limitations on the right of freedom of association beyond what is permissible under Article 22(2) ICCPR.

2.3.4. *Conclusions on Articles 21 and 22 of the ICCPR*

- (61) Having regard to the nature of the rights infringed, the duration, the scale and the impact of the violations, the Commission finds that Cambodia's use of its laws and its judicial and administrative actions to restrict the right to freedom of association and peaceful assembly and its failure to take effective steps to ensure a free civic space, constitutes a serious and systemic violation of the principles laid down in Articles 21 and 22 of the ICCPR, within the meaning of Article 19(1)(a) of the GSP Regulation.
- (62) The Commission recalls that whilst the right to freedom of association and peaceful assembly may be subject to certain restrictions, such restrictions have to satisfy the conditions set out in Article 22(2) of the ICCPR, including the condition that any restriction be 'necessary in a democratic society and proportionate'. However, the Commission finds that Cambodia has not sufficiently demonstrated that the restrictions on the right to freedom of association and peaceful assembly provided under its laws or imposed meet the conditions set out in Article 22 of the ICCPR ⁽³³⁾.

3. REMAINING ISSUES UNDER ILO CONVENTIONS 87 AND 98 AS WELL AS THE ICESCR

3.1. *Labour rights – freedom of association, right to organise and collective bargaining (Articles 2, 3, 4 and 7 of ILO Convention 87; Articles 1 and 3 of ILO Convention 98; Articles 19, 21 and 22 ICCPR; Articles 7 and 8 ICESCR)*

- (63) The Commission takes note of the information and update provided by Cambodia regarding the labour right issues set out in the Notice of Initiation.
- (64) The Commission notes that the actions taken by Cambodia since the launch of the temporary withdrawal procedure in February 2019 show that some improvements have been made on labour right issues. However, serious shortcomings and violations remain on two issues, namely the conclusion of the civil and criminal cases against trade union leaders and the investigations of the murders of trade union leaders, as recommended by the ILO.
- (65) The Commission finds that irrespective of considerable progress in the settlement of the numerous criminal, civil and un-resolved labour dispute cases concerning trade union leaders, activists and workers, all the remaining open cases should be resolved without delay. The settlement of many cases, while commendable, does not negate the prior occurrence of arbitrary arrests, even if their duration was brief.
- (66) The Commission notes the lack of concrete results in the investigations of the murders of trade union leaders committed in 2004 and 2007. Moreover, despite Cambodia's commitment to bring the perpetrators to justice as quickly as possible, and the organisation of the *ad hoc* tripartite meeting convened by the National Commission on Reviewing the Application of International Labour Conventions Ratified by Cambodia in January 2019 and the inter-ministerial meeting on February 2019, those investigations are still open.
- (67) The Commission finds that the unresolved civil and criminal cases against trade union leaders, and failure to conclude the independent investigations of the murders of trade union leaders, are in serious violation of the principles of the right to freedom of association enshrined in the fundamental ILO Conventions 87 and 98, and also of Articles 19, 21 and 22 of the ICCPR.
- (68) The Commission also considers that a new round of negotiations with the social partners to continue the revision of the Law on Trade Unions (LTU) should be launched without delay. The revision should prioritise the opening of the scope of the LTU to all workers and civil servants, the additional provisions to facilitate the registration of trade unions and employer associations, and the protection against all acts of anti-union discrimination with the objective of ensuring full compliance of the LTU with ILO Conventions 87 and 98.

⁽³³⁾ Id.

3.2. *Non-discrimination, land and housing rights (Articles 2(2) and 11(1) of the ICESCR)*

- (69) The Commission takes note of the information and update provided by Cambodia regarding land titles, including recognising the situation of the indigenous peoples in the country. The Commission notes that tangible progress has been made by Cambodia in resolving land disputes concerning economic land concessions in the sugar sector since the launch of the temporary withdrawal procedure. However, shortcomings still exist in the areas of land registration, titling provisions and the lack of appropriate and impartial review as well as addressing issues regarding the rights of the indigenous communities. Further efforts are needed in order to establish an appropriate legal framework to ensure transparent and inclusive mechanisms for the resolution of land disputes.

4. CONCLUSIONS

- (70) Pursuant to Article 19(1)(a) of the GSP Regulation, tariff preferences under the preferential arrangements referred to in Article 1(2) of that Regulation may be withdrawn temporarily for reason of serious and systematic violation of principles laid down in the core human and labour rights UN/ILO conventions.
- (71) Given the facts and considerations described under sections 2.1, 2.2 and 2.3, the nature of the rights infringed, and the duration, scale and the impact of Cambodia's actions and omissions, the Commission finds serious and systematic violations by Cambodia of the principles laid down in Articles 19, 21, 22 and 25 of the ICCPR.
- (72) Consequently, and having considered Cambodia's comments and views, the Commission considers that the preferential arrangement granted to Cambodia should be withdrawn temporarily until it is decided that the reasons for justifying the withdrawal no longer apply.
- (73) In assessing which products should be affected, the Commission takes into account the economic development needs of Cambodia and the objectives of the GSP Regulation, including the need for Cambodia to diversify its export base. The Commission furthermore takes into account the socioeconomic impact of the withdrawal, including the impact on workers and industries.
- (74) The Commission also takes into account the progress made by Cambodia since the initiation of the temporary withdrawal procedure. Finally, the Commission notes the positive cooperation with Cambodia throughout the process.
- (75) Therefore, the Commission concludes that tariff preferences under the GSP Regulation should be withdrawn in respect of certain products originating in Cambodia. These products fall under the following Harmonized System ('HS') codes: 1212 93, 4201 00, 4202, 4203, 4205 00, 4206 00, 6103 41, 6103 43, 6103 49, 6105, 6107, 6109, 6115 10, 6115 21, 6115 22, 6115 29, 6115 95, 6115 96, 6115 99, 6203 41, 6203 43, 6203 49, 6205, 6207, 6211 32, 6211 33, 6211 39, 6211 42, 6211 43, 6211 49, 6212, 6403 19, 6403 20, 6403 40, 6403 51, 6403 59, 6403 91, 6403 99, 6405 and 6406.
- (76) The Commission will continue to monitor the situation in Cambodia, including on the issues of civil and political rights, labour rights, and land and housing rights. The Commission may amend the withdrawal of tariff preferences. Should Cambodia fully address the issues raised in this delegated regulation, the Commission may reinstate the tariff preferences in accordance with Article 20 of the GSP Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 978/2012 is amended as follows:

- (1) In Annex II, under the heading 'Beneficiary countries of the general arrangement referred to in point (a) of Article 1(2) which have been temporarily withdrawn from that arrangement, in respect of all or of certain products originating in these countries' the text and table are replaced by the following:

'Column A: alphabetical code, in accordance with the nomenclature of countries and territories for the Union external trade statistics

Column B: name

Column C: HS Codes of the products in respect of which the tariff preferences referred to in point (a) of Article 1(2) have been temporarily withdrawn

A	B	C
KH	Cambodia	4201 00, 4202, 4203, 4205 00, 4206 00, 6103 41, 6103 43, 6103 49, 6105, 6107, 6109, 6115 10, 6115 21, 6115 22, 6115 29, 6115 95, 6115 96, 6115 99, 6203 41, 6203 43, 6203 49, 6205, 6207, 6211 32, 6211 33, 6211 39, 6211 42, 6211 43, 6211 49, 6212, 6403 19, 6403 20, 6403 40, 6403 51, 6403 59, 6403 91, 6403 99, 6405, 6406'

- (2) In Annex IV, after the first table under the heading 'Beneficiary countries of the special arrangement for the least-developed countries referred to in point (c) of Article 1(2)', the text and table are replaced by the following:

'Beneficiary countries of the special arrangement for the least-developed countries referred to in point (c) of Article 1(2) which have been temporarily withdrawn from that arrangement, in respect of all or of certain products originating in these countries

Column A: alphabetical code, in accordance with the nomenclature of countries and territories for the Union external trade statistics

Column B: name

Column C: HS Codes of the products in respect of which the tariff preferences referred to in point (c) of Article 1(2) have been temporarily withdrawn:

A	B	C
KH	Cambodia	1212 93, 4201 00, 4202, 4203, 4205 00, 4206 00, 6103 41, 6103 43, 6103 49, 6105, 6107, 6109, 6115 10, 6115 21, 6115 22, 6115 29, 6115 95, 6115 96, 6115 99, 6203 41, 6203 43, 6203 49, 6205, 6207, 6211 32, 6211 33, 6211 39, 6211 42, 6211 43, 6211 49, 6212, 6403 19, 6403 20, 6403 40, 6403 51, 6403 59, 6403 91, 6403 99, 6405, 6406'

Article 2

The temporary withdrawal referred to in points (1) and (2) of Article 1 does not apply with respect to imports of products that are already on the way to the Union on 12 August 2020, provided that the destination of such products cannot be changed. In this case, a valid supporting document under the form of a bill of lading will be required.

Article 3

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 12 August 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 February 2020.

For the Commission

The President

Ursula VON DER LEYEN

COMMISSION REGULATION (EU) 2020/551**of 21 April 2020****amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard 3****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards ⁽¹⁾, and in particular Article 3(1) thereof,

Whereas:

- (1) By Commission Regulation (EC) No 1126/2008 ⁽²⁾ certain international standards and interpretations that were in existence at 15 October 2008 were adopted.
- (2) On 22 October 2018, the International Accounting Standards Board (IASB) published Definition of a Business (Amendments to IFRS 3) in order to address the concerns highlighted by the post-implementation review of IFRS 3 *Business Combinations* about the challenges to apply the definition in practice. The objective of the amendments is to clarify the definition of a business with a view to facilitating its practical implementation.
- (3) Following the consultation with the European Financial Reporting Advisory Group, the Commission concludes that the amendments to International Financial Reporting Standard (IFRS) 3 *Business Combinations* meet the criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002.
- (4) Regulation (EC) No 1126/2008 should therefore be amended accordingly.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Accounting Regulatory Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1126/2008, International Financial Reporting Standard 3 Business Combinations, is amended as set out in the Annex to this Regulation.

Article 2

Each company shall apply the amendments referred to in Article 1, at the latest, as from the commencement date of its first financial year starting on or after 1 January 2020

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

⁽¹⁾ OJ L 243, 11.9.2002, p. 1.

⁽²⁾ Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (OJ L 320, 29.11.2008, p. 1).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 April 2020.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Definition of a Business

Amendments to IFRS 3

Amendments to IFRS 3 Business Combinations

Paragraph 3, the definition of the term 'business' in Appendix A and paragraphs B7–B9, B11 and B12 are amended. Paragraphs 64P, B7A–B7C, B8A and B12A–B12D, and headings above paragraphs B7A, B8 and B12, are added. Paragraph B10 is deleted.

IDENTIFYING A BUSINESS COMBINATION

- 3** An entity shall determine whether a transaction or other event is a business combination by applying the definition in this IFRS, which requires that the assets acquired and liabilities assumed constitute a business. If the assets acquired are not a business, the reporting entity shall account for the transaction or other event as an asset acquisition. Paragraphs B5–B12D provide guidance on identifying a business combination and the definition of a business.

EFFECTIVE DATE AND TRANSITION

Effective date

...

- 64P** *Definition of a Business*, issued in October 2018, added paragraphs B7A–B7C, B8A and B12A–B12D, amended the definition of the term 'business' in Appendix A, amended paragraphs 3, B7–B9, B11 and B12 and deleted paragraph B10. An entity shall apply these amendments to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after 1 January 2020 and to asset acquisitions that occur on or after the beginning of that period. Earlier application of these amendments is permitted. If an entity applies these amendments for an earlier period, it shall disclose that fact.

*Appendix A***Defined terms**

...

- business** An integrated set of activities and assets that is capable of being conducted and managed for the purpose of providing goods or services to customers, generating investment income (such as dividends or interest) or generating other income from ordinary activities.

DEFINITION OF A BUSINESS (APPLICATION OF PARAGRAPH 3)

- B7** A business consists of inputs and processes applied to those inputs that have the ability to contribute to the creation of outputs. The three elements of a business are defined as follows (see paragraphs B8–B12D for guidance on the elements of a business):
- (a) **Input:** Any economic resource that creates outputs, or has the ability to contribute to the creation of outputs, when one or more processes are applied to it. Examples include non-current assets (including intangible assets or rights to use non-current assets), intellectual property, the ability to obtain access to necessary materials or rights and employees.
 - (b) **Process:** Any system, standard, protocol, convention or rule that, when applied to an input or inputs, creates outputs or has the ability to contribute to the creation of outputs. Examples include strategic management processes, operational processes and resource management processes. These processes typically are documented, but the intellectual capacity of an organised workforce having the necessary skills and experience following rules and conventions may provide the necessary processes that are capable of being applied to inputs to create outputs. (Accounting, billing, payroll and other administrative systems typically are not processes used to create outputs.)

- (c) **Output:** The result of inputs and processes applied to those inputs that provide goods or services to customers, generate investment income (such as dividends or interest) or generate other income from ordinary activities.

Optional test to identify concentration of fair value

B7A Paragraph B7B sets out an optional test (the concentration test) to permit a simplified assessment of whether an acquired set of activities and assets is not a business. An entity may elect to apply, or not apply, the test. An entity may make such an election separately for each transaction or other event. The concentration test has the following consequences:

- (a) if the concentration test is met, the set of activities and assets is determined not to be a business and no further assessment is needed.
- (b) if the concentration test is not met, or if the entity elects not to apply the test, the entity shall then perform the assessment set out in paragraphs B8–B12D.

B7B The concentration test is met if substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar identifiable assets. For the concentration test:

- (a) gross assets acquired shall exclude cash and cash equivalents, deferred tax assets, and goodwill resulting from the effects of deferred tax liabilities.
- (b) the fair value of the gross assets acquired shall include any consideration transferred (plus the fair value of any non-controlling interest and the fair value of any previously held interest) in excess of the fair value of net identifiable assets acquired. The fair value of the gross assets acquired may normally be determined as the total obtained by adding the fair value of the consideration transferred (plus the fair value of any non-controlling interest and the fair value of any previously held interest) to the fair value of the liabilities assumed (other than deferred tax liabilities), and then excluding the items identified in subparagraph (a). However, if the fair value of the gross assets acquired is more than that total, a more precise calculation may sometimes be needed.
- (c) a single identifiable asset shall include any asset or group of assets that would be recognised and measured as a single identifiable asset in a business combination.
- (d) if a tangible asset is attached to, and cannot be physically removed and used separately from, another tangible asset (or from an underlying asset subject to a lease, as defined in IFRS 16 *Leases*), without incurring significant cost, or significant diminution in utility or fair value to either asset (for example, land and buildings), those assets shall be considered a single identifiable asset.
- (e) when assessing whether assets are similar, an entity shall consider the nature of each single identifiable asset and the risks associated with managing and creating outputs from the assets (that is, the risk characteristics).
- (f) the following shall not be considered similar assets:
 - (i) a tangible asset and an intangible asset;
 - (ii) tangible assets in different classes (for example, inventory, manufacturing equipment and automobiles) unless they are considered a single identifiable asset in accordance with the criterion in subparagraph (d);
 - (iii) identifiable intangible assets in different classes (for example, brand names, licences and intangible assets under development);
 - (iv) a financial asset and a non-financial asset;
 - (v) financial assets in different classes (for example, accounts receivable and investments in equity instruments); and
 - (vi) identifiable assets that are within the same class of asset but have significantly different risk characteristics.

B7C The requirements in paragraph B7B do not modify the guidance on similar assets in IAS 38 *Intangible Assets*; nor do they modify the meaning of the term 'class' in IAS 16 *Property, Plant and Equipment*, IAS 38 and IFRS 7 *Financial Instruments: Disclosures*.

Elements of a business

- B8 Although businesses usually have outputs, outputs are not required for an integrated set of activities and assets to qualify as a business. To be capable of being conducted and managed for purpose identified in the definition of a business, an integrated set of activities and assets requires two essential elements—inputs and processes applied to those inputs. A business need not include all of the inputs or processes that the seller used in operating that business. However, to be considered a business, an integrated set of activities and assets must include, at a minimum, an input and a substantive process that together significantly contribute to the ability to create output. Paragraphs B12–B12D specify how to assess whether a process is substantive.
- B8A If an acquired set of activities and assets has outputs, continuation of revenue does not on its own indicate that both an input and a substantive process have been acquired.
- B9 The nature of the elements of a business varies by industry and by the structure of an entity's operations (activities), including the entity's stage of development. Established businesses often have many different types of inputs, processes and outputs, whereas new businesses often have few inputs and processes and sometimes only a single output (product). Nearly all businesses also have liabilities, but a business need not have liabilities. Furthermore, an acquired set of activities and assets that is not a business might have liabilities.
- B10 [Deleted]
- B11 Determining whether a particular set of activities and assets is a business shall be based on whether the integrated set is capable of being conducted and managed as a business by a market participant. Thus, in evaluating whether a particular set is a business, it is not relevant whether a seller operated the set as a business or whether the acquirer intends to operate the set as a business.

Assessing whether an acquired process is substantive

- B12 Paragraphs B12A–B12D explain how to assess whether an acquired process is substantive if the acquired set of activities and assets does not have outputs (paragraph B12B) and if it does have outputs (paragraph B12C).
- B12A An example of an acquired set of activities and assets that does not have outputs at the acquisition date is an early-stage entity that has not started generating revenue. Moreover, if an acquired set of activities and assets was generating revenue at the acquisition date, it is considered to have outputs at that date, even if subsequently it will no longer generate revenue from external customers, for example because it will be integrated by the acquirer.
- B12B If a set of activities and assets does not have outputs at the acquisition date, an acquired process (or group of processes) shall be considered substantive only if:
- (a) it is critical to the ability to develop or convert an acquired input or inputs into outputs; and
 - (b) the inputs acquired include both an organised workforce that has the necessary skills, knowledge, or experience to perform that process (or group of processes) and other inputs that the organised workforce could develop or convert into outputs. Those other inputs could include:
 - (i) intellectual property that could be used to develop a good or service;
 - (ii) other economic resources that could be developed to create outputs; or
 - (iii) rights to obtain access to necessary materials or rights that enable the creation of future outputs.

Examples of the inputs mentioned in subparagraphs (b)(i)–(iii) include technology, in-process research and development projects, real estate and mineral interests.

- B12C If a set of activities and assets has outputs at the acquisition date, an acquired process (or group of processes) shall be considered substantive if, when applied to an acquired input or inputs, it:
- (a) is critical to the ability to continue producing outputs, and the inputs acquired include an organised workforce with the necessary skills, knowledge, or experience to perform that process (or group of processes); or
 - (b) significantly contributes to the ability to continue producing outputs and:
 - (i) is considered unique or scarce; or
 - (ii) cannot be replaced without significant cost, effort, or delay in the ability to continue producing outputs.
- B12D The following additional discussion supports both paragraphs B12B and B12C:
- (a) an acquired contract is an input and not a substantive process. Nevertheless, an acquired contract, for example, a contract for outsourced property management or outsourced asset management, may give access to an organised workforce. An entity shall assess whether an organised workforce accessed through such a contract performs a substantive process that the entity controls, and thus has acquired. Factors to be considered in making that assessment include the duration of the contract and its renewal terms.
 - (b) difficulties in replacing an acquired organised workforce may indicate that the acquired organised workforce performs a process that is critical to the ability to create outputs.
 - (c) a process (or group of processes) is not critical if, for example, it is ancillary or minor within the context of all the processes required to create outputs.
-

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2020/552

of 20 April 2020

amending Annexes I and II to Decision 2003/467/EC as regards the officially tuberculosis-free status of the region of Valle d'Aosta in Italy and of the Autonomous Region of the Azores in Portugal, and as regards the officially brucellosis-free status of several regions of Portugal

(notified under document C(2020) 2260)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine ⁽¹⁾, and in particular paragraph 4 of Annex A.I and paragraph 7 of Annex A.II thereof,

Whereas:

- (1) Directive 64/432/EEC applies to trade within the Union in bovine animals. It lays down the conditions whereby a Member State or a region thereof may be declared officially tuberculosis-free or officially brucellosis-free as regards bovine herds.
- (2) Article 1(2) of Commission Decision 2003/467/EC ⁽²⁾ provides that regions of Member States listed in Chapter 2 of Annex I thereto are declared officially tuberculosis-free as regards bovine herds.
- (3) Italy has submitted to the Commission documentation demonstrating compliance for the region of Valle d'Aosta with the conditions laid down in Directive 64/432/EEC in order to be recognised as officially tuberculosis-free region as regards bovine herds.
- (4) Portugal has submitted to the Commission documentation demonstrating compliance for the Autonomous Region of the Azores except the island of São Miguel with the conditions laid down in Directive 64/432/EEC in order to be recognised as officially tuberculosis-free region as regards bovine herds.
- (5) Following the evaluation of that supporting documentation, the region of Valle d'Aosta in Italy and the Autonomous Region of the Azores in Portugal except the island of São Miguel should be recognised as officially tuberculosis-free as regards bovine herds.
- (6) Annex I to Decision 2003/467/EC should therefore be amended accordingly.
- (7) Article 2(2) of Decision 2003/467/EC provides that regions of Member States listed in Chapter 2 of Annex II thereto are declared officially brucellosis-free as regards bovine herds.

⁽¹⁾ OJ L 21, 29.7.1964, p. 1977/64.

⁽²⁾ Commission Decision 2003/467/EC of 23 June 2003 establishing the official tuberculosis, brucellosis, and enzootic-bovine-leukosis-free status of certain Member States and regions of Member States as regards bovine herds (OJ L 156, 25.6.2003, p. 74).

- (8) Portugal has submitted to the Commission documentation demonstrating compliance for the administrative regions (distritos) Aveiro, Viseu, Guarda, Coimbra, Leiria and Castelo Branco within the superior administrative region (região) Centro with the conditions laid down in Directive 64/432/EEC in order to be recognised as officially brucellosis-free regions as regards bovine herds.
- (9) Following the evaluation of that supporting documentation, the administrative regions (distritos) Aveiro, Viseu, Guarda, Coimbra, Leiria and Castelo Branco in Portugal should be recognised as officially brucellosis-free as regards bovine herds.
- (10) Annex II to Decision 2003/467/EC should therefore be amended accordingly.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Annexes I and II to Decision 2003/467/EC are amended in accordance with the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 20 April 2020.

For the Commission
Stella KYRIAKIDES
Member of the Commission

ANNEX

Annexes I and II to Decision 2003/467/EC are amended as follows:

(1) in Chapter 2 of Annex I to Decision 2003/467/EC, the entries for Italy and Portugal are replaced by the following:

‘In Italy:

- Region Abruzzo: Province of Pescara,
- Province of Bolzano,
- Region Emilia-Romagna,
- Region Friuli-Venezia Giulia,
- Region Lazio: Provinces of Frosinone, Rieti, Viterbo,
- Region Liguria,
- Region Lombardia,
- Region Marche: Provinces of Ancona, Ascoli Piceno, Fermo, Pesaro-Urbino,
- Region Piemonte,
- Region Sardegna: Provinces of Cagliari, Medio-Campidano, Ogliastra, Olbia-Tempio, Oristano,
- Region Toscana,
- Province of Trento,
- Region Umbria,
- Region Valle d’Aosta,
- Region Veneto.

In Portugal:

- Região Algarve: all distritos,
- Região Autónoma dos Açores except Ilha de São Miguel.’;

(2) in Chapter 2 of Annex II to Decision 2003/467/EC, the entry for Portugal is replaced by the following:

‘In Portugal:

- Região Algarve: all distritos,
 - Região Autónoma dos Açores: Ilhas de Corvo, Faial, Flores, Graciosa, Pico, Santa Maria,
 - Região Centro: distritos Aveiro, Viseu, Guarda, Coimbra, Leiria, Castelo Branco.’.
-

COMMISSION IMPLEMENTING DECISION (EU) 2020/553**of 21 April 2020****amending Implementing Decision (EU) 2020/167 as regards harmonised standards for certain international mobile telecommunications cellular networks equipment**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council ⁽¹⁾, and in particular Article 10(6) thereof,

Whereas:

- (1) In accordance with Article 16 of Directive 2014/53/EU of the European Parliament and of the Council, ⁽²⁾ radio equipment which is in conformity with harmonised standards or parts thereof, the references of which have been published in the *Official Journal of the European Union*, is to be presumed to be in conformity with the essential requirements set out in Article 3 of that Directive, covered by those standards or parts thereof.
- (2) By Commission Implementing Decision C(2015) 5376 ⁽³⁾, the Commission made a request to the European Committee for Electrotechnical Standardisation and the European Telecommunications Standards Institute (ETSI) for the drafting and revision of harmonised standards for radio equipment in support of Directive 2014/53/EU.
- (3) On the basis of the request set out in Implementing Decision C(2015) 5376, ETSI revised harmonised standards EN 301 908-1 V11.1.1, EN 301 908-3 V11.1.3, EN 301 908-14 V11.1.2 and EN 301 908-18 V11.1.2. This resulted in adoption of, respectively, harmonised standards EN 301 908-1 V13.1.1, EN 301 908-3 V13.1.1, EN 301 908-14 V13.1.1 and EN 301 908-18 V13.1.1, on access to radio spectrum for International Mobile Telecommunications (IMT) cellular networks equipment.
- (4) The Commission, together with ETSI, has assessed whether those harmonised standards comply with the request set out in Implementing Decision C(2015) 5376.
- (5) Harmonised standards EN 301 908-1 V13.1.1, EN 301 908-3 V13.1.1, EN 301 908-14 V13.1.1 and EN 301 908-18 V13.1.1 satisfy the essential requirements which they aim to cover and which are set out in Directive 2014/53/EU. It is therefore appropriate to publish the references of those standards in the *Official Journal of the European Union*.
- (6) References of harmonised standards drafted in support of Directive 2014/53/EU are published in Commission Implementing Decision (EU) 2020/167 ⁽⁴⁾. In order to ensure that the references of harmonised standards drafted in support of Directive 2014/53/EU are listed in one act, the references of standards EN 301 908-1 V13.1.1, EN 301 908-3 V13.1.1, EN 301 908-14 V13.1.1 and EN 301 908-18 V13.1.1 should be included in that Implementing Decision.
- (7) The harmonised standards EN 301 908-1 V13.1.1, EN 301 908-3 V13.1.1, EN 301 908-14 V13.1.1 and EN 301 908-18 V13.1.1 replace respectively harmonised standards EN 301 908-1 V11.1.1, EN 301 908-3 V11.1.3, EN 301 908-14 V11.1.2 and EN 301 908-18 V11.1.2, the references of which are published in the C series of the *Official Journal of the European Union* ⁽⁵⁾.

⁽¹⁾ OJ L 316, 14.11.2012, p. 12.

⁽²⁾ Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC (OJ L 153, 22.5.2014, p. 62).

⁽³⁾ Commission Implementing Decision C(2015) 5376 of 4 August 2015 on a standardisation request to the European Committee for Electrotechnical Standardisation and to the European Telecommunications Standards Institute as regards radio equipment in support of Directive 2014/53/EU of the European Parliament and of the Council.

⁽⁴⁾ Commission Implementing Decision (EU) 2020/167 of 5 February 2020 on the harmonised standards for radio equipment drafted in support of Directive 2014/53/EU of the European Parliament and of the Council (OJ L 34, 6.2.2020, p. 46).

⁽⁵⁾ OJ C 326, 14.9.2018, p. 114.

- (8) It is therefore necessary to withdraw the references of harmonised standards EN 301 908-1 V11.1.1, EN 301 908-3 V11.1.3, EN 301 908-14 V11.1.2 and EN 301 908-18 V11.1.2, from the C series of the *Official Journal of the European Union*. Annex III to Implementing Decision (EU) 2020/167 lists the references of harmonised standards drafted in support of Directive 2014/53/EU that are withdrawn from the C series of the *Official Journal of the European Union*. It is therefore appropriate to include those references in that Annex. In order to give manufacturers sufficient time to prepare for applying harmonised standards EN 301 908-1 V13.1.1, EN 301 908-3 V13.1.1, EN 301 908-14 V13.1.1 and EN 301 908-18 V13.1.1, it is necessary to defer the withdrawal of the references of harmonised standards EN 301 908-1 V11.1.1, EN 301 908-3 V11.1.3, EN 301 908-14 V11.1.2 and EN 301 908-18 V11.1.2.
- (9) Implementing Decision (EU) 2020/167 should therefore be amended accordingly.
- (10) Compliance with a harmonised standard confers a presumption of conformity with the corresponding essential requirements set out in Union harmonisation legislation from the date of publication of the reference of such standard in the *Official Journal of the European Union*. This Decision should therefore enter into force on the day of its publication,

HAS ADOPTED THIS DECISION:

Article 1

Annex I to Implementing Decision (EU) 2020/167 is amended in accordance with Annex I to this Decision.

Article 2

Annex III to Implementing Decision (EU) 2020/167 is amended in accordance with Annex II to this Decision.

Article 3

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 21 April 2020.

For the Commission

The President

Ursula VON DER LEYEN

ANNEX I

In Annex I to Implementing Decision (EU) 2020/167, the following rows are added:

No	Reference of the standard
'4.	EN 301 908-1 V13.1.1 IMT cellular networks; Harmonised Standard for access to radio spectrum; Part 1: Introduction and common requirements
5.	EN 301 908-3 V13.1.1 IMT cellular networks; Harmonised Standard for access to radio spectrum; Part 3: CDMA Direct Spread (UTRA FDD) Base Stations (BS)
6.	EN 301 908-14 V13.1.1 IMT cellular networks; Harmonised Standard for access to radio spectrum; Part 14: Evolved Universal Terrestrial Radio Access (E-UTRA) Base Stations (BS)
7.	EN 301 908-18 V13.1.1 IMT cellular networks; Harmonised Standard for access to radio spectrum; Part 18: E-UTRA, UTRA and GSM/EDGE Multi-Standard Radio (MSR) Base Station (BS)

ANNEX II

In Annex III to Implementing Decision (EU) 2020/167, the following rows are added:

No	Reference of the standard	Date of withdrawal
8.	EN 301 908-1 V11.1.1 IMT cellular networks; Harmonised Standard covering the essential requirements of article 3.2 of the Directive 2014/53/EU; Part 1: Introduction and common requirements	22 October 2021
9.	EN 301 908-3 V11.1.3 IMT cellular networks; Harmonised Standard covering the essential requirements of article 3.2 of Directive 2014/53/EU; Part 3: CDMA Direct Spread (UTRA FDD) Base Stations (BS)	22 October 2021
10.	EN 301 908-14 V11.1.2 IMT cellular networks; Harmonised Standard covering the essential requirements of article 3.2 of Directive 2014/53/EU; Part 14: Evolved Universal Terrestrial Radio Access (E-UTRA) Base Stations (BS)	22 October 2021
11.	EN 301 908-18 V11.1.2 IMT cellular networks; Harmonised Standard covering the essential requirements of article 3.2 of Directive 2014/53/EU; Part 18: E-UTRA, UTRA and GSM/EDGE Multi-Standard Radio (MSR) Base Station (BS)	22 October 2021'

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2018 OF THE JOINT VETERINARY COMMITTEE SET UP BY THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE SWISS CONFEDERATION ON TRADE IN AGRICULTURAL PRODUCTS

of 12 June 2018

on amending Appendix 6 of Annex 11 to the Agreement [2020/554]

THE JOINT VETERINARY COMMITTEE,

Having regard to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products ⁽¹⁾ and in particular Article 19(3) of Annex 11 thereto,

Whereas:

- (1) The Agreement between the European Community and the Swiss Confederation on trade in agricultural products ('the Agriculture Agreement') entered into force on 1 June 2002.
- (2) Under Article 19(1) of Annex 11 to the Agriculture Agreement, the Joint Veterinary Committee set up by the Agriculture Agreement ('the Joint Veterinary Committee') is responsible for considering any matter arising in connection with that Annex and its implementation, and for carrying out the tasks provided for therein. Article 19(3) of Annex 11 authorises the Joint Veterinary Committee to amend the Appendices to that Annex, in particular with a view to their adaptation and updating.
- (3) Decision No 2/2003 of the Joint Veterinary Committee ⁽²⁾ amended Appendices 1, 2, 3, 4, 5, 6 and 11 of Annex 11 to the Agriculture Agreement for the first time.
- (4) Decision No 1/2015 of the Joint Veterinary Committee ⁽³⁾ last amended Appendices 1, 2, 3, 4, 5, 6, 7, 10 and 11 of Annex 11 to the Agriculture Agreement.
- (5) Switzerland has benefited for several successive periods from a derogation with regard to the Trichinella examination of the carcasses and meat of domestic swine kept for fattening and slaughter in low-capacity slaughter establishments. No case of Trichinella has been found in Switzerland for more than 50 years. Switzerland also has a functioning detection system and has undertaken that all domestic pork meat placed on the market in the European Union will always have been subject to examination for Trichinella in the carcasses and meat. It is therefore possible to make the derogation permanent.
- (6) In order to avoid a discontinuation of existing and well-functioning practices and to ensure legal continuity which would not cause any foreseeable negative consequences, it is appropriate to apply this Decision retroactively with effect from 1 January 2017.
- (7) This Decision should enter into force on the day of its adoption.
- (8) Appendix 6 of Annex 11 to the Agriculture Agreement should therefore be amended,

⁽¹⁾ OJ L 114, 30.4.2002, p. 132.

⁽²⁾ Decision No 2/2003 of the Joint Veterinary Committee set up by the Agreement between the European Community and the Swiss Confederation on trade in agricultural products of 25 November 2003 regarding the amendment of Appendices 1, 2, 3, 4, 5, 6 and 11 of Annex 11 to the Agreement (OJ L 23, 28.1.2004, p. 27).

⁽³⁾ Decision No 1/2015 of the Joint Veterinary Committee set up by the Agreement between the European Community and the Swiss Confederation on trade in agricultural products of 17 December 2015 regarding the amendment of Appendices 1, 2, 3, 4, 5, 6, 7, 10 and 11 of Annex 11 to the Agreement (OJ L 337, 23.12.2015, p. 128).

HAS ADOPTED THIS DECISION:

Article 1

Appendix 6 of Annex 11 to the Agriculture Agreement is hereby amended as follows:

1. points (4) to (6) of the chapter 'Special Conditions' are replaced by the following:

- '4. The Swiss authorities undertake that carcasses and the meat of domestic swine placed on the market in the European Union will always have been subject to examination for Trichinella.
5. The detection methods described in Chapters I and II of Annex I to Commission Implementing Regulation (EU) 2015/1375 (*) are used in Switzerland for the Trichinella examinations.
6. Pursuant to the provisions of Article 8 (paragraphs 1, letter a, and 3) of the DFI Ordinance of 23 November 2005 on hygiene during the slaughter of livestock (OHyAb; RS 817.190.1) and Article 10 (paragraph 8) of the DFI Ordinance of 16 December 2016 on foodstuffs of animal origin (RS 817.022.108), carcasses and meat of domestic swine kept for fattening and slaughter as well as meat preparations, meat products and derived processed products thereof which are not intended for the market in the European Union shall be marked with a special health stamp in accordance with the model specified in the last subparagraph of Annex 9 to the DFI Ordinance of 23 November 2005 on hygiene during the slaughter of livestock.

These products may not be traded with the Member States of the European Union, in accordance with the provisions of Article 10 of the DFI Ordinance of 16 December 2016.

(*) Commission Implementing Regulation (EU) 2015/1375 of 10 August 2015 laying down specific rules on official controls for Trichinella in meat (OJ L 212, 11.8.2015, p. 7).;

2. point 7 is deleted.

Article 2

This Decision, drawn up in duplicate, shall be signed by the joint chairmen or other persons empowered to act on behalf of the Parties to the Agriculture Agreement.

Article 3

This Decision shall enter into force on the day of its adoption.

It shall apply retroactively with effect from 1 January 2017.

Done at Bern, 12 June 2018.

For the European Union
The Head of Delegation
Koen VAN DYCK

For the Swiss Confederation
The Head of Delegation
Hans WYSS

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