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Meddelelser og oplysninger

Informationsnummer | Indhold | Side

DA

Pris: 3 EUR

[1] EØS-relevant tekst

(Fortsættes på omslagets anden side)

DA

II

(Meddelelser)

MEDDELELSER FRA DEN EUROPÆISKE UNIONS INSTITUTIONER, ORGANER, KONTORER OG AGENTURER

EUROPA-KOMMISSIONEN

Ingen indsigelse mod en anmeldt fusion

(Sag COMP/M.6843 — Siemens/Invensys Rail)

(EØS-relevant tekst)

(2013/C 237/01)

Den 18. april 2013 besluttede Kommissionen ikke at gøre indsigelse mod ovennævnte anmeldte fusion og erklære den forenelig med fællesmarkedet. Beslutningen er truffet efter artikel 6, stk. 1, litra b), i Rådets forordning (EF) nr. 139/2004. Beslutningens fulde ordlyd foreligger kun på engelsk og vil blive offentliggjort, efter at eventuelle forretningshemmeligheder er udeladt. Den vil kunne ses:

— under fusioner på Kommissionens websted for konkurrence (http://ec.europa.eu/competition/mergers/cases/). Dette websted giver forskellige muligheder for at finde de konkrete fusionsbeslutninger, idet de er opstillet efter bl.a. virksomhedens navn, sagsnummer, dato og sektor

— i elektronisk form på EUR-Lex-webstedet (http://eur-lex.europa.eu/da/index.htm) under dokumentnummer 32013M6843. EUR-Lex giver online-adgang til EU-retten.

IV

(Oplysninger)

OPLYSNINGER FRA DEN EUROPÆISKE UNIONS INSTITUTIONER, ORGANER, KONTORER OG AGENTURER

EUROPA-KOMMISSIONEN

Euroens vekselkurs [1]

14. august 2013

(2013/C 237/02)

1 euro =

	Valuta	Kurs		Valuta	Kurs
USD	amerikanske dollar	1,3243	AUD	australske dollar	1,4524
JPY	japanske yen	130,17	CAD	canadiske dollar	1,3689
DKK	danske kroner	7,4583	HKD	hongkongske dollar	10,2705
GBP	pund sterling	0,85440	NZD	newzealandske dollar	1,6501
SEK	svenske kroner	8,6393	SGD	singaporeanske dollar	1,6835
CHF	schweiziske franc	1,2415	KRW	sydkoreanske won	1 482,39
ISK	islandske kroner		ZAR	sydafrikanske rand	13,2129
NOK	norske kroner	7,8130	CNY	kinesiske renminbi yuan	8,1041
BGN	bulgarske lev	1,9558	HRK	kroatiske kuna	7,5415
CZK	tjekkiske koruna	25,822	IDR	indonesiske rupiah	13 667,59
HUF	ungarske forint	298,62	MYR	malaysiske ringgit	4,3351
LTL	litauiske litas	3,4528	PHP	filippinske pesos	57,975
LVL	lettiske lats	0,7025	RUB	russiske rubler	43,8995
PLN	polske zloty	4,2037	THB	thailandske bath	41,504
RON	rumænske leu	4,4315	BRL	brasilianske real	3,0586
TRY	tyrkiske lira	2,5664	MXN	mexicanske pesos	16,8756
			INR	indiske rupee	81,3700

[1] *Kilde*: Referencekurs offentliggjort af Den Europæiske Centralbank.

OPLYSNINGER VEDRØRENDE DET EUROPÆISKE ØKONOMISKE SAMARBEJDSOMRÅDE

EFTA-TILSYNSMYNDIGHEDEN

Statsstøtte — Beslutning om at afslutte en eksisterende statsstøttesag som følge af en EFTA-stats accept af de passende foranstaltninger

(2013/C 237/03)

EFTA-Tilsynsmyndigheden har foreslået passende foranstaltninger, som blev accepteret af Island, til følgende støtteforanstaltning:

Vedtagelsesdato:	24. april 2013
Sag nr.:	70958
Beslutning nr.:	159/13/KOL
EFTA-stat:	Island
Støtteforanstaltningens navn:	Statsstøtte ydet til Landsvirkjun og Orkuveita Reykjavíkur
Retsgrundlag:	Lov nr. 42/1983 om Landsvirkjun, lov nr. 45/1998 om kommunernes styrelse, lov nr. 139/2001 om oprettelse af Orkuveita Reykjavíkur som en fællesejet virksomhed og lov nr. 121/1997 om statsgaranti
Formål:	Ikke relevant
Støtteform:	Ubegrænset garanti fra de statslige og kommunale ejere til Landsvirkjun og Orkuveita Reykjavíkur uden udbetaling af fyldestgørende markedspræmier
Berørte sektorer:	Elsektoren
Andre oplysninger:	På grundlag af foranstaltninger og yderligere forpligtelser fra de islandske myndigheders side med henblik på at afskaffe den ubegrænsede statsgaranti til fordel for Landsvirkjun og Orkuveita Reykjavíkur er Tilsynsmyndighedens tvivl om ordningens uforenelighed blevet fjernet, og undersøgelsen er afsluttet.

Den autentiske udgave af beslutningen (renset for fortrolige oplysninger) findes på EFTA-Tilsynsmyndighedens websted:

http://www.eftasurv.int/state-aid/state-aid-register/

Opfordring til at fremsætte bemærkninger efter artikel 1, stk. 2, i del I i protokol 3 til aftalen mellem EFTA-staterne om oprettelse af en tilsynsmyndighed og en domstol for så vidt angår statsstøtte i forbindelse med regionalstøtte til ordningen for investeringsincitamenter i Island og seks investeringsaftaler

(2013/C 237/04)

Ved afgørelse nr. 177/13/KOL af 30. april 2013, der er gengivet på det autentiske sprog efter dette resumé, indledte EFTA-Tilsynsmyndigheden proceduren efter artikel 1, stk. 2, i del I i protokol 3 til aftalen mellem EFTA-staterne om oprettelse af en tilsynsmyndighed og en domstol. De islandske myndigheder er blevet underrettet ved kopi af denne afgørelse.

EFTA-Tilsynsmyndigheden giver hermed EFTA-staterne, EU-medlemsstaterne og interesserede parter en frist på en måned efter offentliggørelsen af denne meddelelse til at fremsende deres bemærkninger til den pågældende foranstaltning til:

EFTA-Tilsynsmyndigheden
Registreringskontoret
Rue Belliard/Belliardstraat 35
1040 Bruxelles/Brussel
BELGIQUE/BELGIË

Bemærkningerne vil blive videresendt til de islandske myndigheder. Interesserede parter, der fremsætter bemærkninger til sagen, kan skriftligt anmode om at få deres navne hemmeligholdt. Anmodningen skal være begrundet.

RESUMÉ

Sagsforløb

Den 13. oktober 2010 godkendte Tilsynsmyndigheden ved afgørelse nr. 390/10/KOL en ordning for investeringsincitamenter (»ordningen«), som de islandske myndigheder havde anmeldt i henhold til artikel 1, stk. 3, i del I i protokol 3.

Ordningen giver mulighed for at yde støtte i form af direkte tilskud via forskellige former for skattefritagelse i op til 10 år og via salg og leasing af land under markedsværdien til virksomheder i alle sektorer med undtagelse af finanssektoren i forbindelse med initialinvesteringer i områder, der er berettiget til regionalstøtte (kendt som »c-regioner«) i Island. Ordningen udløber den 31. december 2013.

Retsgrundlaget for ordningen som godkendt af Tilsynsmyndigheden er:

— lov nr. 99/2010 om fremme af initialinvesteringer i Island (»loven«), som det islandske parlament vedtog den 29. juni 2010 og

— bekendtgørelse (EU) nr. 985/2010 om fremme af initialinvesteringer i Island, som det islandske erhvervsministerium udsendte den 25. november 2010 (»bekendtgørelsen«) svarende til det udkast til bekendtgørelse, Tilsynsmyndigheden fik forelagt den 27. september 2010. bekendtgørelsen er afledt ret baseret på loven.

Den 30. december 2010 udsendte det islandske erhvervsministerium en ny bekendtgørelse (EU) nr. 1150/2010 (»suppleringsbekendtgørelsen«) om ændring af bekendtgørelsen, bl.a. hvad angår sikring af incitamentvirkningen af investeringsstøtten. Suppleringsbekendtgørelsen blev ikke anmeldt til Tilsynsmyndigheden.

I perioden 2010-2013 indgik den islandske stat en række aftaler, som den anså for at falde ind under ordningen (»de seks investeringsaftaler«):

1) Den 30. december 2010 med Becromal Iceland ehf.

2) Den 30. december 2010 med Thorsil ehf.

3) Den 17. februar 2011 med Íslenska Kísilfélagið ehf.

4) Den 22. september 2011 med Verne Real Estate II ehf.

5) Den 7. maj 2012 med GMR Endurvinnslan ehf.

6) Den 28. januar 2013 med Marmeti ehf.

Efter en række drøftelser vedrørende forhåndsanmeldelse anmeldte de islandske myndigheder i henhold til artikel 1, stk. 3, i del I til protokol 3 den 13. december 2012 en række forslag til ændringer (»anmeldte ændringer«) af loven til Tilsynsmyndigheden.

Vurdering af foranstaltningen

De anmeldte ændringer vedrører afskaffelse af direkte tilskud, en ny metode for fastsættelse af maksimumsselskabsskatten for alle nye projekter under ordningen, fritagelse for stempelafgift og en højere grænse for, hvornår der skal betales kommunal ejendomsskat og bidrag til socialsikringsordninger. Tilsynsmyndigheden kom til den foreløbige konklusion, at de anmeldte ændringer til ordningen ikke kunne adskilles fra ordningen som sådan. Som følge heraf vurderede den hele ordningen som ændret. Desuden vurderede den anvendelsen af ordningen og fandt, at visse elementer i de seks investeringsaftaler, som Island havde indgået på grundlag af ordningen som ændret, rejste tvivl om, hvorvidt de var forenelige med EØS-aftalen.

Tilsynsmyndigheden nærede bl.a. tvivl om, hvorvidt den støtte, der blev ydet i henhold til investeringsaftalerne med Becromal, Kísilfélagið og Verne, blev ydet inden for ordningens anvendelsesområde som godkendt af Tilsynsmyndigheden og overholdt kravet om incitamentvirkning af investeringsstøtten.

Derudover nærede Tilsynsmyndigheden tvivl om, hvorvidt investeringsaftalen med Marmeti blev indgået inden for rammerne af ordningens anvendelsesområde, hvad angår kravet om incitamentvirkning af investeringsstøtten.

Tilsynsmyndigheden nærede desuden tvivl om, hvorvidt dele af investeringsaftalerne med henholdsvis Thorsil og GMR indeholder bestemmelser om støtte, der ydes uden for rammerne af den godkendte ordning.

Tilsynsmyndigheden nærede således tvivl om, hvorvidt støtteordningen som ændret og den støtte, der var ydet inden for rammerne af de seks investeringsaftaler, kan anses for at være forenelig med EØS-aftalen.

Konklusion

I betragtning af ovenstående tvivler Tilsynsmyndigheden på, at ordningen som ændret og de seks ovennævnte investeringsaftaler opfylder EØS-aftalens artikel 61, stk. 3, sammenholdt med kravene i Tilsynsmyndighedens retningslinjer for regionalstøtte.

På baggrund af ovenstående har Tilsynsmyndigheden i overensstemmelse med artikel 1, stk. 2, i del I i protokol 3 til aftalen mellem EFTA-staterne om oprettelse af en tilsynsmyndighed og en domstol besluttet at indlede den formelle undersøgelsesprocedure af ordningen for investeringsincitamenter med de ændringer, som de islandske myndigheder har anmeldt, og som ændret ved bekendtgørelse (EU) nr. 1150/2010, som de islandske myndigheder har gennemført, og af de seks investeringsaftaler.

Interesserede parter opfordres til at fremsætte deres bemærkninger senest en måned efter offentliggørelsen af denne meddelelse i *Den Europæiske Unions Tidende*.

EFTA SURVEILLANCE AUTHORITY DECISION

No 177/13/COL

of 30 April 2013

to initiate the formal investigation procedure with regard to the investment incentives scheme and certain investment agreements

(Iceland)

THE EFTA SURVEILLANCE AUTHORITY ('THE AUTHORITY'),

HAVING REGARD to the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 61 to 63 and Protocol 26,

HAVING REGARD to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice ('the Surveillance and Court Agreement'), in particular to Article 24,

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), in particular to Article 1 in Part I and Article 4(3) in Part II,

HAVING REGARD to the consolidated version of the Authority's Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 in Part II of Protocol 3,

Whereas:

I. FACTS

1. Chronology of events

(1) On 13 October 2010, the Authority approved a scheme on investment incentives ('the scheme') [1] notified by the Icelandic authorities pursuant to Article 1(3) in Part I of Protocol 3, by Decision No 390/10/COL.

(2) The scheme provides for the possibility of granting aid in the form of direct grants, through various tax exemptions for up to 10 years and through the sale and lease of land below market value to companies in all sectors except the financial sector, in connection with an initial investment in areas eligible for regional aid (known as 'c-regions') in Iceland.

(3) The scheme expires on 31 December 2013.

(4) The legal basis for the scheme as approved by the Authority is:

(a) Act No 99/2010 on incentives for initial investments in Iceland ('the Act') [2], adopted by the Icelandic Parliament on 29 June 2010; and

(b) Regulation (EU) No 985/2010 on incentives for initial investments in Iceland [3], issued by the Ministry of Industry on 25 November 2010 ('the Regulation'), corresponding to a draft regulation which was submitted to the Authority on 27 September 2010. The Regulation is a piece of secondary legislation, based on the Act.

(5) On 30 December 2010, the Ministry of Industry issued a new regulation, Regulation (EU) No 1150/2010 ('the Supplementary Regulation'), amending the Regulation. The Supplementary Regulation was not notified to the Authority.

(6) During the period 2010 to 2013, the Icelandic State entered into a number of agreements which it considered to fall under the scheme. The agreements are collectively referred to herein as 'the six investment agreements'. They are as follows:

(a) on 30 December 2010, the Minister for Industry on behalf of the Icelandic Government entered into an investment agreement with Becromal Iceland ehf., Becromal Properties ehf., Stokkur Energy ehf. and Becromal SpA, with a projected investment cost of EUR 117,25 million;

(b) on 30 December 2010, the Minister for Industry on behalf of the Icelandic Government entered into an investment agreement with Thorsil ehf., Timminco Ltd. and Stokkur Energy ehf.;

(c) on 17 February 2011, the Minister for Industry, Energy and Tourism and the Minister for Finance on behalf of the Icelandic Government entered into an investment agreement with Íslenska Kísilfélagið ehf., Tomahawk Development á Íslandi ehf. and GSM Enterprises LLC;

(d) on 22 September 2011, the Minister for Industry, Energy and Tourism on behalf of the Icelandic Government entered into an investment agreement with Verne Real Estate II ehf. and Verne Holdings Ldt., on a project with the total envisaged investment cost of USD 675 million;

(e) on 7 May 2012, the Minister for Industry, Energy and Tourism on behalf of the Icelandic Government entered into an investment agreement with GMR Endurvinnslan ehf.;

(f) on 28 January 2013, the Minister for Industries on behalf of the Icelandic Government entered into an investment agreement with Marmeti ehf.

2. Procedure

(7) Following pre-notification discussions, the Icelandic authorities notified, pursuant to Article 1(3) in Part I of Protocol 3, a series of proposed amendments ('the notified amendments') to Act No 99/2010 by way of a letter dated and received on 13 December 2012 (Event No 656578).

(8) By letter submitted on 22 January 2013 (Event No 660120), the Authority requested additional information from the Icelandic authorities. By letter received on 30 January 2013 (Event No 661235), the Icelandic authorities replied to the information request.

[1] Available at: http://www.eftasurv.int/media/state-aid/390-10-COL.pdf

[2] *Lög um ívilnanir vegna nýfjárfestinga á Íslandi*, referred to in this Decision as the Act, adopted by the Parliament on 29 June 2010.

[3] *Reglugerð um um ívilnanir vegna nýfjárfestinga á Íslandi*, referred to in this Decision as the Regulation, issued by the Minister for Industry on 25 November 2010.

(9) The Authority submitted a second request for information on 11 February 2013 (Event No 662250) to which it received a reply on 5 March 2013 (Event Nos 664789-92). The Authority responded to this letter on 20 March 2013. The Icelandic authorities submitted further information by way of a letter received on 10 April 2013 (Event No 668635) and a meeting was held between the Icelandic authorities and the Authority on 23 April 2013.

3. **Description of the measures under preliminary examination**

3.1. ***Background***

(10) As described above, the investment incentives scheme is established by Act No 99/2010, and Regulation (EU) No 985/2010, on incentives for initial investments in Iceland. The Act and the Regulation set out a mechanism for the support of initial investment in regions which, under Decision No 378/06/COL of 6 December 2006 on the map of assisted areas and levels of aid in Iceland, are eligible for regional aid.

(11) The scheme was approved by the Authority by Decision No 390/10/COL on 13 October 2010, following a notification from the Icelandic authorities dated 28 June 2010. The Authority assessed the scheme under the Guidelines on national regional aid 2007-2013 ('the Regional aid guidelines') ([4]).

(12) The aim of the scheme is to promote initial investment thereby creating jobs in the disadvantaged regions in Iceland. Projects with projected minimum annual turnover of ISK 300 million or which create at least 20 new direct jobs within the first two years of operation are eligible. The project shall operate in the region for at least 10 years. Projects must be approved by the Minister for Industry, who signs an investment agreement with each successful applicant. Approval of applications is subject to an *ex ante* cost benefit calculation by the Invest in Iceland Agency. For a detailed description of the scheme, reference is made to Section I.2 of Decision No 390/10/COL of 13 October 2010.

(13) The present decision of the Authority concerns three sets of measures taken in Iceland with regard to the scheme: (i) the notified amendments (Section 3.2 below); (ii) the non-notified amendments (Section 3.3); and (iii) the six investment agreements (Section 3.4).

3.2. ***The notified amendments to the scheme***

(14) On 30 November 2012, the Icelandic Government submitted to the Parliament a bill which proposed a series of amendments to the existing scheme. On 13 December 2012, the Icelandic authorities submitted a notification to the Authority of the proposed amendments. The Icelandic Parliament adopted the bill, as Act No 25/2013, on 13 March 2013. Act No 25/2013 will only come into force once the Authority has given a decision approving the amendments. The notified amendments are as follows:

1. Direct grants under Article 8 of Act No 99/2010 will be abolished.

2. The maximum payable corporate income tax rate will be fixed to 18 %, instead of the applicable rate at the time at which an agreement is signed between the Icelandic authorities and a beneficiary. The statutory income tax rate was raised from 18 % to 20 % on 1 January 2011. This means that the maximum 18 % tax rate will apply, instead of the tax rate (currently 20 %) in force at the time at which a new agreement is signed between the Icelandic authorities and a beneficiary for new investment projects under the scheme. The new maximum rate will apply as of the entry into force of the notified amendment until the expiry of the scheme on 31 December 2013.

3. Stamp duties under Act No 36/1978 on documents relating to new investment projects which will be granted aid under the scheme will be zero (instead of 0,15 %, as provided in the scheme as approved).

4. The municipal property tax rate for new investment projects will be 50 % less than the maximum rate stipulated in Chapter II of Act No 4/1995 (instead of the 30 % reduction as provided in the scheme as approved).

5. The general social security charge for new investment projects will be 50 % less than the charge stipulated in Article 2(3) of Act No 113/1990 on social security charge (instead of the 20 % reduction as provided in the scheme as approved).

([4]) Available at: http://www.eftasurv.int/?1=1&showLinkID=15125&1=1

(15) The Icelandic authorities have asserted ([5]) that the proposed amendments will not apply to projects subject to investment agreements which had already been entered into between the beneficiary and the Icelandic authorities at the time at which the notified amendments enter into effect. The Icelandic authorities have explained that the proposed amendments will expire on 31 December 2013, as will the scheme itself.

3.3. ***The non-notified amendments to the scheme***

(16) During its preliminary examination, the Authority became aware that the Supplementary Regulation, issued by the Ministry of Industry shortly after the Authority's approval of the scheme ([6]), had made a number of changes to the scheme.

(17) The amendments concern:

(i) the application of the incentive effect test under the scheme (Article 3(c) of the Regulation);

(ii) the maximum corporate tax applicable (Article 8(2)(1) of the Regulation); and

(iii) the date for calculating the maximum duration of the tax exemptions allowed under the scheme (Article 20(3)(1) and (3)(2) of the Regulation).

(18) The amended provisions (with the text added by the Supplementary Regulation underlined) read as follows:

Article 3

Conditions for granting aid

When assessing whether to grant aid to new investment projects, according to Act No 99/2010, the following cumulative criteria shall be fulfilled:

[…]

(c) the prospective investment project has not been started before the signing of an agreement according to Article 20, or according to a special investment agreement prior to entry into force of the Act, and it is demonstrated that the granting of the aid is a prerequisite for the project to materialise in Iceland.

[…]

Article 8

Aid relating to taxes and other public fees

Regional aid under Act No 99/2010 may be granted through the reduction of taxes or other public fees relating to the investment project in question.

A company, established for initial investment purposes, which fulfils the cumulative criteria set out in Act No 99/2010, and in this Regulation, shall enjoy the following tax derogations:

1. The income tax rate of the company shall, for the period stipulated in Article 3, not exceed the income tax rate in effect when the investment agreement according to Article 20 is concluded, or according to a special investment agreement prior to entry into force of the Act

[…]

Article 20

Agreement on the granting of aid

If an applicant accepts the Minister's offer to enter into an agreement on aid, such an agreement shall be signed between the applicant and the Minister on behalf of the national authorities, and where applicable the local authorities, on the granting of aid for an investment project.

The duration of an agreement granting aid according to paragraph 1 shall not exceed 13 years from the date of signature, taking into account a special investment agreement, should such an agreement previously have been concluded concerning the project. Aid granted on the basis of Article 9 of Act No 99/2010 shall apply for 10 years calculated from the date when the relevant tax liability occurs or the obligation to pay the relevant charges under Article 9(2) of Act No 99/2010 is triggered, however not exceeding 13 years from the signing of an agreement granting aid, taking into account a special investment agreement should such an agreement previously have been concluded concerning the project. The net present value of the estimated total State aid to be granted over the duration of

([5]) Letter submitted to the Authority on 30 January 2013 (Event No 661235).

([6]) As stated above, the Authority approved the scheme on 13 October 2010 and the Supplementary Regulation was issued on 30 December 2010.

an investment agreement shall be stipulated in the agreement. An investment agreement entered into on the basis of Act No 99/2010 shall be published in the B-Section of the Official Gazette ([7]).

(19) During the Authority's preliminary examination, the Icelandic authorities provided the following explanation regarding the non-notified amendments to the scheme:

'The reference "or according to a special investment agreement prior to entry into force of the Act" was added to certain provisions of Regulation (EU) No 985/2010 with Regulation (EU) No 1150/2010 from 30 December 2010. This means that the prospective investment project must not have been initiated before the signing of an investment agreement referred to in the Regulation or a special investment agreement, specifically related to the project in question. The reference to a special investment agreement relates to preparation of the investment project. Nevertheless, the project as such shall not be undertaken before the activation of the incentives referred to in Regulation (EU) No 985/2010, as amended.' ([8]).

3.4. *The six investment agreements*

(20) The Icelandic authorities have provided the Authority with copies of six investment agreements, which were entered into during the period December 2010 to January 2013.

(21) The six investment agreements are listed below ([9]):

Table 1

	Date	Companies	Project
1	30 December 2010	Becromal Iceland ehf., Becromal Properties ehf., Stokkur Energy ehf. and Becromal SpA	Aluminium foil anodising plant in the town of Akureyri
2	30 December 2010	Thorsil ehf., Stokkur Energy ehf. and Timminco Limited	Silicon metal production in Þorlákshöfn in the municipality of Ölfus
3	17 February 2011	Íslenska Kísilfélagið ehf., Tomahawk Development á Íslandi ehf. and GSM Enterprises LLC	Silicon metal production in Helguvík in the municipality of Reykjanesbær
4	27 September 2011	Verne Real Estate II ehf. and Verne Holdings Ltd.	Data centre in the municipality of Reykjanesbær
5	7 May 2012	GMR Endurvinnslan ehf.	Steel recycling plant at Grundartangi in the municipality of Hvalfjarðarsveit
6	28 January 2013	Marmeti ehf.	Fish factory in the town of Sandgerði

(22) The Authority has not been provided with copies of any agreements which are expressly labelled as 'special investment agreements', as referred to in the Supplementary Regulation or as described in the reply from the Icelandic authorities quoted in paragraph 19 above.

([7]) In the Authority's translation. The text in Icelandic (with the text added by the Supplementary Regulation also underlined) is as follows: 3.gr. *Skilyrði fyrir veitingu ívilnana*. Við mat á því hvort veita eigi ívilnun vegna nýfjárfestingar samkvæmt lögum nr. 99/2010 skal eftirfarandi skilyrðum vera fullnægt: […] c. að fyrirhugað fjárfestingarverkefni sé ekki hafið áður en undirritaður er samningur um ívilnun skv. 20. gr. eða samkvæmt sérstökum fjárfestingarsamningi fyrir gildistöku laganna, og að sýnt sé fram á að veiting ívilnunar sé forsenda þess að fjárfestingarverkefnið verði að veruleika hér á landi […] 8. gr. *Ívilnanir tengdar sköttum og opinberum gjöldum*. Byggðaaðstoð getur samkvæmt lögum nr. 99/2010 verið í formi frávika frá sköttum eða opinberum gjöldum vegna viðkomandi fjárfestingarverkefnis. Félag sem stofnað er um nýfjárfestingu og uppfyllir öll skilyrði laga nr. 99/2010, og reglugerðar þessarar, fyrir veitingu ívilnunar skal njóta eftirfarandi skattalegra ívilnana: 1. Tekjuskattshlutfall viðkomandi félags skal, í þann tíma sem kveðið er á um í 3. mgr., aldrei vera hærra en það tekjuskattshlutfall sem í gildi er þegar samningur skv. 20. gr. eða samkvæmt sérstökum fjárfestingarsamningi fyrir gildistöku laganna, er gerður við félagið. […] 20. gr. *Samningur um veitingu ívilnunar*. Fallist umsækjandi á boð iðnaðarráðherra um ívilnun skal gerður samningur milli umsækjanda og iðnaðarráðherra, fyrir hönd stjórnvalda og, eftir atvikum, sveitarfélaga um veitingu ívilnunar vegna viðkomandi fjárfestingarverkefnis Samningur um veitingu ívilnunar skv. 1. mgr. skal að hámarki gilda í 13 ár frá undirritun hans, að teknu tilliti til sérstaks fjárfestingarsamnings ef slíkur samningur hefur áður verið gerður um verkefnið. Ívilnun sem veitt er á grundvelli 9. gr. laga nr. 99/2010 skal gilda í 10 ár frá því að viðkomandi skattskylda eða gjaldskylda sem kveðið er á um í 2. mgr. 9. gr. laga nr. 99/2010 myndast, þó aldrei lengur en í 13 ár frá undirritun samnings um veitingu ívilnunar að teknu tilliti til sérstaks fjárfestingarsamnings ef slíkur samningur hefur áður verið gerður um verkefnið. Í samningi samkvæmt þessari grein skal koma fram áætlun um samtals fjárhæð ívilnunar, núvirt, á gildistíma samningsins. Samningur um veitingu ívilnunar, sem iðnaðarráðherra undirritar samkvæmt lögum nr. 99/2010, skal birtur í B-deild Stjórnartíðinda.

([8]) Letter submitted to the Authority on 30 January 2013 (Event No 661235).

([9]) The investment agreements are available in the public domain, according to Article 21(4) of Act No 99/2010, and they are as of 4 March 2013 available here, in English and in Icelandic: http://stjornartidindi.is/AdvertList.aspx?ID=7F3926F3-992D-4211-903D-D4F28F1DC87A&view=2&value=ddc9274e-1111-44ac-9d52-5ffa832684fc

(23) However, two of the investment agreements listed in the table above refer to previous agreements which were entered into by the Icelandic authorities with the same beneficiaries. These agreements concerned the same projects. The Authority is therefore making the initial assumption that these earlier investment agreements fall into the category of 'special investment agreements' and that the references to 'special investment agreements' in the Supplementary Regulation in fact relates to these earlier investment agreements. The investment agreements which make reference to earlier agreements are to be found at No 1 and No 3 in the table above.

(24) The first of these was concluded between the State and Becromal Iceland ehf., Becromal Properties ehf., Stokkur Energy efh. and Becromal SpA ('the Becromal Investment Agreement'). This agreement refers to an investment agreement on the same project between the same parties which was entered into on 7 July 2009 ([10]). The project referred to is an investment in an aluminium foil anodising plant to be constructed in the town of Akureyri in two steps; the first phase, EUR 66 million, by end of March 2011 and second phase by the end of year 2014, total investment cost approximately EUR 117,25 million. The Icelandic authorities have provided some further information about the background of the Becromal Investment Agreement, including information on the earlier agreement referred to, dated on 7 July 2009 ([11]).

(25) The third investment agreement set out in the table above, which was concluded between the State and Íslenska Kísilfélagið ehf., Tomahawk Development á Íslandi ehf. and GSM Enterprises LLC ('the Kísilfélagið Investment Agreement') likewise refers to a previous agreement, which was entered into between the same parties, and on the same project, on 29 May 2009 ([12]). The project referred to is the construction, in two or more steps, of a silicon production plant in Helguvík in the municipality of Reykjanesbær with the production capacity of up to 50 000 metric tonnes of metallurgical grade silicon or equivalent (> 98 %), up to 20 000 metric tonnes of silica dust (SiO_2) per year.

(26) Lastly, although the fourth investment agreement set out in the table above, which was entered into between the State and Verne Real Estate II ehf. and Verne Holdings Ltd. ('the Verne Investment Agreement') ([13]), does not refer to a previous agreement, it nonetheless appears to concern the same or a similar investment project ([14]) as one that was subject to a previous decision of the Authority. By Decision No 418/10/COL of 3 November 2010 ([15]), the Authority opened a formal investigation procedure on an investment agreement which was entered into on 23 October 2009 between the State and Verne Real Estate ehf. and Verne Holdings Ltd. on a data centre project in Reykjanesbær. According to the Icelandic authorities, this agreement was later cancelled and the notification was withdrawn. The matter was not pursued further by the Authority at that point ([16]).

(27) The preliminary view of the Authority is that the reference to 'special investment agreements' in the Supplementary Regulation may encompass these three earlier investment agreements, which were entered into prior to the entry into force of the scheme.

(28) For the sake of completeness, the Authority notes that the investment agreements set out at points 2, 5 and 6 in the table above do not relate to any earlier investment agreements, according to information available to the Authority at this point in time.

(29) The Authority has not been provided with further details of any 'special investment agreements' referred to in the Supplementary Regulation, apart from some information on the one referred to in the Becromal Investment Agreement. The Authority has not received copies of these earlier investment agreements. Furthermore, the Authority has not been provided with information on or

([10]) See the Becromal Investment Agreement at sections H and I of the preamble.
([11]) Letter received on 10 April 2013 (Event No 668635).
([12]) See the Kísilfélagið Investment Agreement at sections N and O of the preamble.
([13]) The Verne Investment Agreement refers to Verne Real Estate II ehf. as the 'Company' and Verne Holdings Ltd. as the 'Investor' and to both companies as the 'Parties'. For the purposes of this Decision, the companies will both be referred to as 'Verne'. According to the Annual Report 2011 for Verne Holdings Ltd., Verne Holdings ehf. put in place a new parent company for the Verne Group on 24 June 2011: Verne Holdings Ltd., being a company incorporated in England and Wales that is tax resident in the United Kingdom. The prior parent company was Verne Holdings ehf., domiciled in Iceland. Verne Holdings ehf. was the beneficiary according to the agreement subject to assessment in Decision No 418/10/COL. Verne Real Estate II ehf., established in September 2011, is a subsidiary of Verne Holdings Ltd., which also owns the following subsidiaries: Verne Real Estate ehf., Verne Global Inc and Verne Global Ltd., according to the Verne Group's consolidated financial statements for the period ended on 31 December 2011. The Authority regards both Verne Real Estate II ehf. and Verne Holdings Ltd. as beneficiaries under the Verne Investment Agreement.
([14]) The project will be further described in Section II.4.3.3 below.
([15]) Available at: http://www.eftasurv.int/media/decisions/418-10-COL.pdf
([16]) See reference to the Icelandic authorities' letter on 28 September 2011 in the Authority's Decision No 261/12/COL at paragraph 8; http://www.eftasurv.int/media/decisions/261-12-COL.pdf

copies of any separate agreements entered into between municipalities and the beneficiaries ([17]), pursuant to the provisions of the scheme allowing for exemptions from municipal property tax and sale or lease of land below market price as provided for under the scheme ([18]).

II. ASSESSMENT

1. The presence of State aid

1.1. *State aid within the meaning of Article 61(1) of the EEA Agreement*

(30) Article 61(1) of the EEA Agreement reads as follows:

'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States 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 Contracting Parties, be incompatible with the functioning of this Agreement.'

In the following, the Authority will assess whether the criteria for the existence of State aid within the meaning of Article 61(1) of the EEA Agreement are fulfilled.

1.2. *Presence of State resources*

(31) To be qualified as State aid, an advantage must be granted by the State or through State resources. For the purposes of the State aid rules, the term 'State' covers also regional and local bodies ([19]). A loss of tax revenue is equivalent to consumption of State resources in the form of fiscal expenditure and State support may be provided equally by tax provisions of a legislative, regulatory or administrative nature as through the practices of the tax authorities ([20]). A reduction in the tax base or a total or partial reduction on the amount of tax, fees or charges involves a loss of revenue and is therefore equivalent to the consumption of State resources in the form of fiscal expenditure.

(32) The scheme, its amendments and the six investment agreements all contain tax concessions, and thus State resources are involved ([21]).

1.3. *Favouring certain undertakings or the production of certain goods*

(33) The scheme as amended by the notified and non-notified amendments is selective as only undertakings investing in certain regions in Iceland eligible for assistance under Article 61(3)(c) of the EEA Agreement can receive aid under the scheme. As regards the six investment agreements, the beneficiaries are individual companies and therefore the measures are selective.

(34) The definition of aid is more general than that of subsidy, because it includes not only positive benefits, such as subsidies themselves, but also State measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which thus, without being subsidies in the strict sense of the word, are similar in character and have the same effect ([22]). According to settled case law, a measure by which the public authorities grant to certain undertakings a tax exemption which, although not involving a transfer of State resources, places those to whom the tax exemption applies in a more favourable financial situation than other taxpayers constitutes aid granted by the State or through State resources ([23]).

(35) The Authority notes that the scheme and the six investment agreements contain a clause protecting against future increase of the statutory rate of income tax. This guarantee against future legislative changes in itself constitutes State aid in the Authority's view.

(36) The scheme as amended by the notified and non-notified measures, and the six investment agreements, allow or will allow beneficiaries to be relieved of part of the costs which they would normally have to bear themselves in their course of business.

([17]) Such an agreement is referred to in the Kísilfélagið Investment Agreement.
([18]) Reference is made to Decision No 390/10/COL, description of the State aid granted by municipalities, see Section I.2.5.2.6 and Section I.2.5.3.
([19]) Case 248/84 *Germany* v *Commission* [1987] ECR 4013, paragraph 17.
([20]) See paragraph 3 of the Authority's Business Taxation Guidelines.
([21]) As regards the notified amendments to the scheme described in Section I.3.2 above, the proposed modifications include an abolition of direct grants under Article 8 of the Act. The removal of a provision to directly grant aid manifestly does not amount to a State aid measure in and of itself. This part of the notified measures clearly does not need to be assessed within the present Decision.
([22]) See, in particular, Case C-143/99 *Adria-Wien Pipeline and Wietersdorfer & Peggauer Zementwerke* [2001] ECR I-8365, paragraph 38; Case C-501/00 *Spain* v *Commission* [2004] ECR I-6717, paragraph 90; and Case C-66/02 *Italy* v *Commission* [2005] ECR I-10901, paragraph 77.
([23]) See to that effect Case C-387/92 *Banco Exterior de España* [1994] ECR I-877, paragraph 14; and Case C-222/04 *Cassa di Risparmio di Firenze and Others* [2006] ECR I-289, paragraph 132.

(37) Thus, the scheme as amended and the six investment agreements favour certain undertakings and the production of certain goods within the meaning of Article 61(1) of the EEA Agreement.

1.4. ***Distortion of competition and effect on trade between Contracting Parties***

(38) The notified and non-notified measures and the six investment agreements will strengthen the competitive situation of the supported undertakings in the eligible regions compared to their actual or potential competitors in the EEA. The scheme applies to all sectors, with the exemption of the financial sector, and therefore has a potential to distort trade within the EEA since it cannot be excluded that in some of these sectors there is competition between the aid beneficiaries and undertakings in the EEA.

1.5. ***Conclusion***

(39) The Authority notes that in its Decision No 390/10/COL it found the measures under the scheme to fall within the definition of State aid within the meaning of Article 61(1) of the EEA Agreement. The Authority has not been presented with new elements calling for a different assessment with respect to the scheme at this point.

(40) Based on the above findings, the Authority comes to the conclusion that the scheme, as amended by the non-notified measures set out in the Supplementary Regulation and by the notified amendments, constitutes State aid within the meaning of Article 61(1) of the EEA Agreement. The same conclusion applies to the six investment agreements.

2. **New aid procedure**

(41) All plans to amend the scheme are subject to a notification obligation pursuant to Article 1(3) in Part I of Protocol 3 and the Authority's Decision No 390/10/COL approving the scheme.

(42) The Authority recalls that the notified amendments to the approved scheme consist of the following four proposals for increasing the level of exemptions from statutory taxes for new investment projects:

1. The maximum payable corporate income tax rate will be fixed to 18 %, instead of the applicable tax rate (currently 20 %) at the time at which an agreement is signed between the State and a beneficiary, as is the case under the scheme as approved.

2. Stamp duties under Act No 36/1978 on documents relating to the new investment project will be zero, instead of 0,15 % as provided in the scheme as approved (the statutory stamp duty is 1,5 %).

3. The municipal property tax rate for such projects will be 50 % less (instead of 30 % less, as set out in the scheme as approved) than the maximum rate stipulated in Chapter II of Act No 4/1995.

4. The general social security charge for such projects will be 50 % less (instead of 20 % less, as set out in the scheme as approved) than is stipulated in Article 2(3) of Act No 113/1990 on social security charge.

(43) Under Article 1(c) in Part II of Protocol 3, 'alterations to existing aid' are to be regarded as new aid. An increase in the original budget of an existing aid scheme by up to 20 %, without amending the provisions of an aid scheme, is not considered an alteration to existing aid, according to the Authority's Decision No 195/04/COL on the implementing provisions under Article 27 in Part II of Protocol 3 ('the Implementing Decision'). The notified amendments do not merely increase the budget of the scheme. Rather, the Icelandic authorities propose amending certain provisions for granting aid in the form of tax exemptions while abolishing direct grants from the scheme. The Icelandic authorities have not considered the notified alterations to fall within the criteria for the simplified notification procedure set out in Article 4(2) of the Implementing Decision. Moreover, it is the Authority's view that the notified amendments cannot be classified as 'of purely formal or administrative nature', as referred to in Article 4 of the Implementing Decision. Accordingly, the notified amendments must be regarded as alterations to existing aid. Hence, the notified amendments are classified as new aid as defined in Article 1(c) in Part II of Protocol 3.

(44) The question then arises whether the entire scheme, or only the amendments, are to be classified as new aid. According to established case-law, when alterations are made which are severable from the existing aid only the alterations need to be notified, and only when the alteration affects the actual substance of the original scheme is the latter transformed into new aid scheme ([24]). In the Authority's preliminary view, the proposals to: (i) introduce a new method for granting maximum corporate tax, which would, in the current situation reduce the tax rate for all new projects instead of guaranteeing

([24]) See joined Cases T-195/01 and T-207/01 *Government of Gibraltar* v *Commission* [2002] ECR II-2309, paragraphs 109 and 111.

a current maximum tax rate; (ii) eliminate stamp duties for all new projects instead of only reducing them; (iii) increase the level of municipal tax discount from 30 % to 50 %; and (iv) increase the level of general social security charge from 20 % to 50 % are alterations that change basic features of the scheme and they are not severable from the scheme itself. They will apply to all aid granted to new projects under the scheme. Moreover, these are not merely additions to the scheme, which add (e.g.) categories of companies or operations, but rather, alterations that affect the whole scheme.

(45) The amendment under point (i) in itself changes the nature and the intrinsic functioning of the provision on corporate tax rate from being a pure guarantee against future increases in corporate tax rate into fixing a maximum rate below the rate at any given point, when a beneficiary enters into an agreement. This new arrangement would apply to all new projects which would be granted aid under the scheme in the future.

(46) Furthermore, the elimination of stamp duties in their entirety under point (ii) and the increase in discounts under points (iii) and (iv) are large in volume and they increase the discounts considerably. Under these circumstances, it is the Authority's preliminary view that the alterations to the scheme cannot be classified as being severable from the initial scheme. In other words, the alterations affect the entire scheme, such that the whole scheme must be regarded as new aid, which may not be implemented prior to a new approval. According to established case-law, the entire scheme thus becomes new aid ([25]).

(47) The Authority moreover recalls that the non-notified amendments set out in the Supplementary Regulation concern: (i) the application of the incentive effect test under the scheme; (ii) the maximum corporate tax rate applicable; and (iii) the date for calculating the maximum duration of the tax exemptions allowed under the scheme.

(48) These amendments to the scheme are in the Authority's preliminary view subject to a notification obligation pursuant to Article 1(3) in Part I of Protocol 3.

(49) In its ruling in the *Heineken Brouwerijen* Case ([26]), the Court stated:

'Where a plan has been notified and the Commission has not raised any objections to it, but the Member State concerned has made alterations of which the Commission has not been informed, the provision precludes the putting into effect of the aid programme in its entirety. The position may be different only where the alteration in question is in actual fact a separate aid measure which should be assessed separately and which is therefore not such as to influence the assessment which the Commission has already made of the initial plan.'

(50) The Authority takes the preliminary view that the non-notified amendments to the scheme, made only shortly after its approval, influence the assessment which the Authority has already made of the scheme, in particular as regards the application of the incentive effect test, which is a central element in assessing the compatibility of national regional aid with Article 61(1) EEA. Therefore, the Authority takes the preliminary view that the whole scheme, as amended, constitutes new aid according to Article 1 in Part II of Protocol 3.

(51) Insofar as one or more of the six investment agreements are concluded outside the scope of the initial scheme as approved by the Authority, they likewise constitute new aid, according to established case-law ([27]).

3. **Procedural requirements**

(52) Pursuant to Article 1(3) in Part I of Protocol 3, 'the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid (…). The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision'.

(53) The Icelandic authorities submitted a notification of the amendments to the scheme contained in the bill of law amending the Act with a letter dated and received on 13 December 2012 (Event No 656578). The bill was put forward to the Parliament prior to the notification. According to the information currently available to the Authority, the bill was adopted by the Parliament on 13 March 2013 as Act No 25/2013. However, the under Article 3 therein, the Act will only become effective once the Authority has approved the amendments. The Authority therefore concludes that the Icelandic authorities have respected their obligations under Article 1(3) in Part I of Protocol 3 as regards the notified amendments proposed.

([25]) Joined Cases T-195/01 and T-207/01 *Government of Gibraltar* v *Commission* [2002] ECR II-2309, paragraphs 109 and 111. See also Joined Cases 91 and 127/83 *Heineken Brouwerijen* [1984] ECR 3435, paragraph 21.
([26]) Joined Cases 91 and 127/83 *Heineken Brouwerijen* [1984] ECR 3435, paragraph 21.
([27]) See Case E-14/10 *Konkurrenten.no* v *EFTA Surveillance Authority*, paragraph 87, Report of the EFTA Court [2011], p. 268.

(54) The Icelandic authorities did not notify the Supplementary Regulation to the Authority. The Authority therefore concludes that the Icelandic authorities have not respected their obligations pursuant to Article 1(3) in Part I of Protocol 3 as regards the amendments put into effect by Regulation (EU) No 1150/2010.

(55) The Icelandic authorities did not notify the six investment agreements entered into after the approval of the scheme. Insofar as the investment agreements, or elements thereof, entail State aid granted outside the scope of the approved scheme and/or were subject to individual notification requirements under Section 4.3 of the Regional aid guidelines, the Authority therefore concludes that the Icelandic authorities have not respected their obligations pursuant to Article 1(3) in Part I of Protocol 3.

4. **Compatibility of the aid**

4.1. ***Introduction***

(56) Article 61(3)(c) EEA concerns, inter alia, aid to facilitate the development of certain disadvantaged areas, known as national regional aid.

(57) National regional aid is designed to assist the development of the most disadvantaged regions by supporting investment and job creation. The Authority has issued guidelines on the application of the derogation (the Regional aid guidelines), which are in force for the period 2007 to 2013. For Iceland, the Authority has approved a map for regions eligible for such aid, in Decision No 378/06/COL of 6 December 2006 on the map of assisted areas and levels of aid in Iceland.

(58) The Authority notes that the areas which are eligible for aid under the scheme and the individual projects which were subject to the six Investment Agreements are in areas that are eligible for regional investment aid based on the Authority's Decision No 378/06/COL.

4.2. ***The scheme as amended***

(59) The Authority recalls that the notified amendments to the scheme as approved by the Authority in its Decision No 390/10/COL are contained in the following four proposals for increasing the level of exemptions from statutory taxes for new investment projects which will be granted under the scheme following the entry into effect of the proposed amendments:

1. The maximum payable corporate income tax rate will be fixed to 18 %, instead of the applicable tax rate (currently 20 %) at the time at which an agreement is signed between the State and a beneficiary, as is the case under the scheme as approved.

2. Stamp duties under Act No 36/1978 on documents relating to the new investment project will be zero, instead of 0,15 % as provided in the scheme as approved.

3. The municipal property tax rate for such projects will be 50 % less (instead of 30 % less, as set out in the scheme as approved) than the maximum rate stipulated in Chapter II of Act No 4/1995.

4. The general social security charge for such projects will be 50 % less (instead of 20 % less, as set out in the scheme as approved) than is stipulated in Article 2(3) of Act No 113/1990 on social security charge.

(60) During the preliminary examination, the Authority became aware of further amendments and of the application of the scheme, which give rise to doubts as to whether the scheme has sufficiently clear criteria, inter alia, for the incentive effect to be verified, as applied by the Icelandic authorities. In order to review this, the Authority has examined the application of the scheme during the period from when it came into force in 2010 to date. In this respect the Authority has been provided with the six investment agreements entered into — in the Icelandic authorities' view — on the basis of the scheme ([28]).

4.2.1. *The application of the scheme*

(61) First, the Authority notes that the Becromal Investment Agreement and the Kísilfélagið Investment Agreement both contain a reference to previous agreements on the same projects, referred to as 'a preliminary step'. The Becromal Investment Agreement and the Kísilfélagið Investment Agreement are considered by their parties to be 'a follow up and completion of previous investment agreement'. This appears to be facilitated by the amendments to the scheme made by the Supplementary Agreement.

(62) It is the Authority's preliminary view that this application of the amended scheme indicates that the conditions under the scheme as regards the application of the incentive effect test are not sufficiently limited or strict, as regards the condition that the prospective investment project is not to have started prior to the signing of an agreement under the scheme. The Authority recalls that the

([28]) The six investment agreements will be examined in more detail in Section 4.3 below.

Icelandic authorities are under the obligation to ensure that construction work had not started prior to entering into agreements under the scheme and this obligation was a clear precondition for the its approval of the scheme by Decision No 390/10/COL. The Authority recalls its reference to the significance of the incentive effect requirements under paragraph 30 of the Regional aid guidelines, set out at Section II.3.6 of Decision No 390/10/COL.

(63) Second, the scheme contains an obligation to include in the Investment Agreements an estimate of the net present value of the total State aid to be granted to a project over the duration of the scheme, and to establish the eligible costs and the overall ceiling of the aid.

(64) The obligation to make a reference to the net present value of the aid granted in the agreements entered into on the basis of the scheme is codified in Article 20(4) of the Regulation. However, the estimated net present value of the aid is not referred to in any of the six Investment Agreements. In this respect, the application of the scheme appears not to be entirely consistent with the scheme as set out in the Regulation and approved by the Authority.

(65) Further, only two of the six investment agreements refer to the total investment costs of the respective projects (the Becromal Investment Agreement and the Verne Investment Agreement). The Authority recalls that the scheme provides for aid in the form of tax concessions, which only qualifies as investment aid on the basis set out in detail in Decision No 390/10/COL at Section II.3.3. An essential element for aid in the form of tax concessions to be regarded as investment aid is an overall ceiling expressed as a percentage of the eligible investment costs in a specific project.

(66) The Authority's preliminary view is that the lack of a clear statement of the eligible investment costs, the lack of a reference to the estimate of the discounted value of the aid, and the lack of a statement as to the overall ceiling in the investment agreements, indicate that the scheme being applied in a way that is insufficiently transparent. The Authority therefore has doubts as to whether the scheme contains sufficiently clear provisions to ensure the necessary transparency and documentation with regard to the maximum aid amounts.

(67) Third, the examples mentioned above give rise to doubt as to whether the cost-benefit analysis calculation which forms part of the scheme — a mechanism designed to ensuring the necessity and proportionality of the aid to be established *ex ante* — is sufficiently described, regulated and applied under the scheme. The cost-benefit analysis was a precondition for the approval of the scheme, see Section II.3.6 of Decision No 390/10/COL.

(68) Fourth, in their submission to the Authority during the preliminary examination of the notified amendments to the scheme, the Icelandic authorities asserted that the amendments will not have any retroactive effects on investment agreements already concluded before the entering into force of the amendments. They have asserted that all the proposed amendments will apply only to new agreements entered into after the proposed amendments enter into force. Moreover, they have stated that beneficiaries under existing agreements under the scheme will not benefit from the amended scheme. Further, the Icelandic authorities have stated that investment projects that have already been approved under the scheme will not be eligible under the amended scheme.

(69) In the Authority's preliminary view, the assertions above appear to be in contradiction with the explicit provisions of some of the investment agreements set out above. It is expressly stated in the Kísilfélagið Investment Agreement, the Verne Investment Agreement, the GMR Investment Agreement and the Marmeti Investment Agreement that the beneficiaries have an unconditional right to claim that they will benefit from any amendments to the scheme which would be more favourable for them than the current arrangements. The scheme, as approved, classifies the aid granted as investment aid, on the basis set out above in paragraph 65. An unconditional contractual obligation to grant further aid in the future, in case of an amended scheme, appears not to be compatible with these conditions. It is the Authority's preliminary view that this application of the scheme is not consistent with the scheme as approved. The Authority has doubts as to whether the provisions and mechanisms under the scheme are sufficiently clear to ensure that the aid is sufficiently limited and proportionate to ensure the regional aid objectives, and is not instead pure operating aid.

(70) Fifth, the Becromal Investment Agreement and the Thorsil Investment Agreement contain a clause on the possibility of an extension of the aid period beyond the maximum duration provided for in the scheme. The duration of the aid measures is fixed in the scheme. Grants of aid in the form of tax measures qualify as investment aid on the condition that these measures are limited in time. The Authority's preliminary view is that the application of the scheme appears to be contrary to the nature of the investment aid which was approved by the Authority. The Authority has doubts as to whether the provisions and mechanisms under the scheme are sufficiently clear to ensure that the aid is necessary and sufficiently proportionate to ensure the regional aid objectives and is not pure operating aid.

4.2.2. *The non-notified amendments to the scheme*

(71) As described in Section I.3.3 above, the Supplementary Regulation, issued on 30 December 2010, alters Article 3(c), Article 8(2)(1) and Article 20(3)(1) and (3)(2) of the Regulation. These provisions concern:

(i) the application of the incentive effect test under the scheme as approved by the Authority (Article 3(c));

(ii) the rules on maximum corporate tax applicable (Article 8(2)(1)); and

(iii) the date for calculating the maximum duration of the tax exemptions allowed under the scheme (Article 20(3)(1) and (3)(2)).

(72) The Supplementary Agreement was not notified to the Authority. In light of the conclusions above as regards the notified amendments and the six investment agreements, the Authority takes the view that the alterations of the scheme made under the Supplementary Agreement shortly after the approval of the scheme in 2010 must be examined by the Authority.

(73) The Authority recalls that it stated in Decision No 390/10/COL that:

'The scheme excludes the award of aid to projects which have started before an agreement with the Icelandic authorities is entered into, according to Article 21 of the Incentives Act.' ([29]).

(74) Furthermore, the Authority referred in that Decision to the assertions made by the Icelandic authorities regarding the incentive effect of the scheme, as follows:

'Moreover, no aid will be granted under the scheme to projects on which work has started before the signing of an agreement on the granting of aid between the State and the beneficiary. The Icelandic authorities have confirmed that the scheme excludes the award of aid to projects which have started before publication of the final text of the scheme in line with paragraph 93 in fine of the Regional aid guidelines' ([30]).

(75) The Authority's preliminary view is that the Supplementary Regulation has adversely affected the incentive effect requirement set out in the original scheme. The amended wording of Article 3(c) of the Regulation states that aid may be granted also to a project which has started after a special investment agreement prior to entry into force of the Regulation. The Authority takes the preliminary view that this amendment considerably widens the scope of the scheme beyond that which was approved by the Authority's decision.

(76) Moreover, the Authority takes the preliminary view that the amendment to Article 3(c) of the Regulation means that the conditions under which aid is to be granted may in this respect no longer be consistent with the Regional aid guidelines. Indeed, paragraph 30 of the Regional aid guidelines states:

'It is important to ensure that regional aid produces a real incentive effect to undertake investments which would not otherwise be made in the assisted areas. Therefore aid may only be granted under aid schemes if the beneficiary has submitted an application for aid and the authority responsible for administering the scheme has subsequently confirmed in writing that, subject to detailed verification, the project in principle meets the conditions of eligibility laid down by the scheme before the start of work on the project.'

(77) The requirements and method for verifying the existence of an incentive effect of aid, as prescribed by the Regional aid guidelines, were a precondition for the Authority's approval of the scheme by Decision No 390/10/COL. Contrary to the assertion made by the Icelandic authorities, referred to in Decision No 390/10/COL, the scheme as subsequently amended by the Supplementary Regulation appears to allow for aid to be granted to projects which were started before the scheme entered into force. Consequently, the Authority has doubts as to whether the requirement of an incentive effect of aid granted under the scheme as amended by the Supplementary Regulation is fulfilled.

(78) It is the Authority's preliminary view that, under the Regulation as amended by the Supplementary Regulation, aid might have been granted not only to projects upon which work had started prior to the conclusion of an agreement under the scheme, but indeed also prior to the entry into force of the scheme as such. The Authority's preliminary view is reinforced by the fact that two of the six investment agreements (the Becromal investment agreement and the Kísilfélagið Investment Agreement) indeed have an explicit reference to earlier individual agreements signed in 2009 on what appear to be the same projects. These projects appear to have been started prior to the starting of the scheme in 2010. In addition, the Verne Investment Agreement likewise appears to be related to a prior agreement, entered into in 2009, on the same or a similar project to one which that had already been started in 2008.

([29]) Decision No 390/10/COL, p. 6.
([30]) *Idem*, p. 16.

(79) The Authority cannot exclude that the conditions for granting aid, as specified in the scheme following the insertion of new text ('or according to a special investment agreement prior to entry into force of the Act') into Article 3 of the Regulation, allow for a grant of aid which would be considered incompatible with the EEA Agreement, as aid may be granted for a project upon which work has started prior to the conclusion of an agreement.

(80) The alteration which the Supplementary Regulation made to Article 8 of the Regulation alters the reference rate for corporate income tax which can be guaranteed to a beneficiary as a maximum tax rate. Under the amended version of the article, the reference rate in case of a 'special investment agreement' is (alternatively) the corporate tax rate in effect at a point in time prior to the entry into force of the scheme. Under the original version of the article, the reference rate would exclusively have been the tax rate at the time at which an investment agreement was signed under the scheme.

(81) The Authority considers that the Supplementary Regulation appears to allow for a retroactive application of the scheme, insofar as the amended provisions of Article 8 allow for an application of the corporate tax rate applicable before the start of the scheme. In view of the amendments to Article 3 of the Regulation, which allow for a grant of aid to be made on the basis of agreements which were entered into prior to the entry into force of the scheme, the Authority has doubts as to whether the amended version of Article 8, in conjunction with the amended version of Article 3, can properly be considered to be compatible with the EEA Agreement.

(82) The amendments made to Article 20 of the Regulation appear to provide for a maximum duration of the tax exemptions which dates from the signature of an agreement prior to the entry into force of the scheme in 2010.

(83) The Authority has not yet been provided with sufficient information to allow it to verify whether the alterations, seen in relation to the alterations to Articles 3 and 8 of the Regulation discussed above, could be considered to be compatible with the EEA Agreement.

(84) On this basis, the Authority has doubts as to whether the scheme, as amended by the Supplementary Regulation, can be regarded compatible with the State aid provisions of the EEA Agreement.

(85) The Authority likewise has doubts as to whether the scheme as amended by Act No 25/2013 will be capable of being found to be compatible with the EEA Agreement.

(86) The Authority is under a duty to carry out all requisite consultations and, therefore, to initiate the procedure under Article 4(4) in Part II of Protocol 3, if its initial investigation does not enable the Authority to overcome all the difficulties involved in determining whether the aid is compatible with the functioning of the EEA Agreement.

(87) In the light of this duty, and the doubts expressed above as regards the necessary clarity and limitation provided for under the scheme and its application to date, the Authority cannot approve the notified amendments without further investigation.

4.3. ***The six investment agreements***

(88) As a preliminary point the Authority observes that aid granted under an approved scheme would in principle constitute existing aid. However, as set out above, any aid granted outside the scope of the approved scheme would be new aid. The Authority takes the preliminary view that aid granted on the basis of the non-notified amendments to the scheme is granted outside the scope of the approved scheme. Such aid could have been granted on the basis of investment agreements entered into prior to the entry into force of the scheme, with such earlier investment agreements later being brought within the scheme on the basis of the provisions of the Supplementary Regulation.

(89) The Authority accordingly sets out below a preliminary examination of the Becromal, the Kísilfélagið and the Verne investment agreements, which appear to be related to earlier investment agreements, entered into prior to the entry into force of the scheme.

(90) Moreover, the Authority cannot at this point exclude the possibility that aid granted under the Thorsil, GMR and Marmeti investment agreements, which are not related to any earlier investment agreements, went beyond the limitations set out in the scheme as approved.

(91) Therefore, the Authority will examine all six investment agreements which the Icelandic authorities have made available under the preliminary examination in the present case. They all refer to the scheme as the basis for the tax exemptions they contain.

(92) The Authority will first address the three investment agreements, discussed in Section I.3.4 above, which appear to be related to a previous investment agreement: the Becromal, the Kísilfélagið and the Verne investment agreements.

4.3.1. *The Becromal Investment Agreement*

4.3.1.1. Link to an earlier investment agreement and the incentive effect

(93) The Becromal Investment Agreement was signed on 30 December 2010. Sections D, H and I of the preamble to the Becromal Investment Agreement read as follows:

'The Investors have, from the year 2007, been taking the necessary preliminary and preparatory steps towards the establishment of the Plant in the township of Akureyri, which production will be marketed towards non-Icelandic international clients using electric power for its operations, supplied in first instance by Landsvirkjun on a long-term basis, propelling, by the end of March 2011, 60 specially designed machines with the estimated investment in the 1st phase being EUR 66 million, and with the expected expansion of the Plant's capacity (the 2nd phase), by the year end 2014, with the total investment expected to be approximately EUR 117,25 million (hereinafter referred to as the "Project").

On 7 July 2009, the Parties signed and Investment relating to the Project, covering an exemption of Becromal and the Investors from restrictions set forth in Rules No 1130/2008 on Foreign Exchange. The Investment Agreement, dated 7 July 2009, also contains a commitment to enter into a complete Investment Agreement, "similar to the Investment agreements the Government has previously concluded in relation to other large-scale power intensive investment projects in Iceland". In this respect the Investment Agreement signed on 7 July 2009 was regarded as "a preliminary step towards the conclusion of a more comprehensive investment agreement between the Parties."

This Investment Agreement is therefore a follow up and completion of the previous Investment Agreement dated 7 July 2009. This Investment Agreement has legal validity on the basis of Act No 99/2010, on incentives for initial incentive on Iceland, which came into force in 2010, and subsequent secondary legislation.'

(94) The text cited appears to be linked to the alterations of the scheme by the Supplementary Regulation, which was issued on the same day as the signing of the Becromal Investment Agreement (on 30 December 2010). The Authority takes the preliminary view that Supplementary Regulation may have enabled a retroactive application of the scheme. From the information submitted by the Icelandic authorities the Authority understands that the Supplementary Regulation was designed so as to enable the previous investment agreement, entered into with Becromal on 7 July 2009, to be covered by the scheme ([31]).

(95) The scheme, as approved, allows for no granting of aid to projects under agreements entered into prior to the entry into force of the scheme. On the basis of the information available, the Authority has doubts as to whether the Becromal Investment Agreement is entered into on the basis of the approved scheme.

(96) Furthermore, the Authority has doubts as to whether the link drawn in the Becromal Investment Agreement to a previous (special) investment agreement on the same project is compatible with the conditions set out in the Regional aid guidelines on the so-called incentive effect of investment aid.

(97) The facts of the present case appear to indicate that at the date on which the Becromal Investment Agreement was signed, work on the project to which aid was granted may have been already started. Indeed, it appears that this work started even before the signing of the earlier agreement on 7 July 2009 ([32]).

(98) The rules on incentive effect are stated in paragraph 30 of the Regional aid guidelines:

'It is important to ensure that regional aid produces real incentive effect to undertake investments which would not otherwise be made in the assisted areas. Therefore, aid may only be granted under aid scheme if the beneficiary has submitted an application for aid and the authority responsible for has submitted an application for aid and the authority responsible for administering the scheme has subsequently confirmed in writing that, subject to detailed verification, the project in principle meets the conditions of eligibility laid down by the scheme before the start of work on the project. An express reference to both conditions must also be included in all aid schemes. In the case of ad hoc aid, the competent authority must have issued a letter of intent, conditional on the Authority's approval of the measure, to award aid before work starts on the project. If work begins before the conditions laid down in this paragraph are fulfilled, the whole project will not be eligible for aid.'

([31]) Letter from the Iceland authorities, received on 10 April 2013 (Event No 668635).

([32]) According to information on the company's website, production started in the Becromal plant in Iceland in 2009, see: http://www.becromal.eu/history.php and http://www.becromal-.eu/iceland_projects.php
According to a news article in *Morgunblaðið* on 24 July 2008, the construction works had already started on the plant in 2008, see: http://www.mbl.is/-greinasafn/grein/1231137/

(99) The Regional aid guidelines defines the term 'start of work' as 'start of construction work or first firm commitment to order equipment, excluding preliminary feasibility studies' ([33]).

(100) In line with the decision-making practices of the European Commission and the Authority, a letter of intent within the meaning of the Regional aid guidelines can be described as a 'document that may be considered as explicitly granting aid to [the company] for the investment' ([34]).

(101) The aim of paragraph 30 of the Regional aid guidelines is to make it possible for the Authority to ascertain the existence of incentive effect of investment aid without unduly delaying the investment by carrying out a full analysis of the economic circumstances of the recipient's investment decision ([35]). Thus, as confirmed by the General Court in the *Kronoply* judgement, the Authority may base its assessment of the incentive effect by reference to a circumstance of a chronological nature ([36]).

(102) As referred to above, work appears to have started on the Becromal project already in 2008. The Authority has not been provided with information which enables it to verify whether the Icelandic authorities had committed to grant aid to the project before start of work.

(103) The Authority accordingly has doubts as to whether the incentive effect condition is satisfied as regards the Becromal Investment Agreement.

4.3.1.2. Retroactive effect of maximum income tax

(104) Article 15.1 of the Becromal Investment Agreement reads:

'This Agreement shall become effective on the date of signature by the Parties. However, Article 7.1 of the Agreement shall become effective as of 7 July 2009.'

(105) Further, Article 7.1 reads:

'Notwithstanding eventual changes in Act No 90/2003 on income tax, as amended, the Companies shall pay an income tax rate of 15 % with the following special provisions […].'

(106) At the time of signature of the Becromal Investment Agreement the general corporate tax rate in Iceland was 18 % ([37]). According to the scheme as approved by the Authority, the applicable tax rate at the time of signing an investment agreement was the tax rate that could be guaranteed to the beneficiary. By fixing the maximum tax rate (15 %) as that which was applicable at a point in time prior to the entry into force of the scheme, the aid granted under the Becromal Investment Agreement was granted on terms which were more favourable than those set out in the approved scheme. The Authority takes the preliminary view that the Becromal Investment Agreement fell in this respect outside the scope of the approved scheme.

4.3.1.3. The investment costs and aid ceiling

(107) The Authority has consistently considered that fiscal aid granted to provide an incentive for firms to embark on certain specific projects (investment in particular) and which is limited in its intensity with respect to the costs of carrying out the project is no different from a subsidy and may be treated in the same manner. Nevertheless, such aid schemes must lay down rules which are sufficiently transparent to enable the benefit conferred to be quantified ([38]).

(108) The Authority consequently considers that for aid such as the tax measures granted under the scheme and in the Becromal Investment Agreement to be characterised as investment aid: (i) it

([33]) See the Regional aid guidelines, footnote 32.

([34]) Case N 357/2008 *Fri-El Acerra S.r.l.* (Italy), paragraph 40. See also Commission Decision of 15 September 2010, C 8/2009 *Fri-El Acerra*, and the Authority's Decision No 418/10/COL at Section II.3.1.

([35]) See Case T-162/06 *Kronoply* v. *Commission* [2009] ECR II-1, paragraph 81: 'As stated in recital 30 of the Decision, the aim of applying the criterion set out in point 4.2 of the Guidelines is to ascertain the existence of incentive effect without unduly delaying the investment by carrying out a full analysis of the economic circumstances of the recipient's investment decision, which might prove very difficult or time-consuming. The latter concern explains why the finding that the aid application was made before the start of the investment project is enough in itself, according to the Commission, to raise the presumption that an incentive effect exists.'

([36]) See Case T-162/06 *Kronoply* v. *Commission* [2009] ECR II-1, paragraph 80: 'It should be observed that that provision refers to a circumstance of a chronological nature and therefore points to an examination *ratione temporis*, which is perfectly suitable for determining whether an incentive effect exists. That examination must be made by reference to the decision to invest taken by the undertaking concerned, which marks the beginning of the dynamic process that an operating investment such as that undertaken by Kronoply necessarily constitutes.'

([37]) The Authority notes that the rate of corporate income tax have been increasing in Iceland from 2008 and 2009, when it was 15 %, while it had been 18 % in 2002-2007. The tax rate was raised again to 18 % on 1 January 2010 and to 20 % on 1 January 2011.

([38]) See the Authority's Direct business taxation guidelines at 4(3), also referred to in the Authority's Decision No 390/10/COL.

must be linked to the carrying-out of specific project(s); (ii) it must be based on an amount invested in the region; (iii) it must be possible to quantify the aid (assess the precise volume); and (iv) there must be a ceiling expressed as a percentage of the amount invested in the region ([39]).

(109) The Becromal Investment Agreement refers to EUR 117,25 million as the total investment cost. However, it is not clear whether this is regarded as the eligible investment costs under the scheme. Moreover, the agreement does not refer to aid intensities or a fixed aid ceiling. Neither does the agreement appear to provide for a mechanism for quantifying the aid.

(110) Furthermore, the Authority observes that the Becromal Investment Agreement's preamble refers to the investment project as to be constructed in two phases, where the second phase would expand the production capacity of the plant. The first phase, approximately EUR 66 million in investment, appears to have been expected to be operational by the end of March 2011 while the total investment costs are envisaged at EUR 117,25 million by end of year 2014. Thus, it appears that the second phase (the expansion) would almost double the initial investment by end of 2014. However, the agreement does not contain any explicit commitment on behalf of the company to complete the construction of the second phase (or the whole project). Moreover, the agreement does not contain any explicit obligation as to the time limits for the construction. Since the first phase, according to information presently available to the Authority, appears to (have) become operational irrespective of whether the subsequent phase (the expansion) is eventually constructed, the Authority's understanding is that the situation could arise in which Becromal could decide not to carry out the construction work required under the second phase of the envisaged project. This would entail considerably lower investment costs (EUR 66 million instead of EUR 117,5 million). The Authority accordingly takes the preliminary view that a question mark remains over whether the agreement ensures that a mechanism will be put in place to guarantee whether and how the applicable aid intensities under the Regional aid guidelines would be ensured in this case.

(111) In the light of the above, the Authority has doubts as to whether the Becromal Investment Agreement complies with the conditions set out in Decision No 390/10/COL, since the agreement does not demonstrate that the rules on eligible expenses under the Regional aid guidelines are ensured when fixing the eligible investment costs; there is no explicit obligation to carry out the second phase of the project, the aid appears not to have been quantified and there is no aid ceiling expressed in the agreement.

4.3.1.4. The possibility for an extended period of tax exemptions — Operating aid

(112) Article 15.3 of the Becromal Investment Agreement reads:

'During the 13 years following the date of this Agreement, the Parties shall have concluded discussions regarding a possible extension of this Agreement for a period of a further 13 years following the date of expiration set forth in Article 15.2, on mutually agreeable terms.'

(113) This provision opens up the possibility of negotiations regarding an extension of the tax derogations which are provided for in the agreement beyond the time limit set out in the scheme — that is, 13 years as of the signature of the agreements and 10 years from the date at which the obligation to pay tax is triggered. Such a provision is outside the scope of the scheme as approved. Moreover, it is the Authority's preliminary view that such a provision would be incompatible with the EEA Agreement, as it is not linked to an initial investment, but instead reduces the costs which Becromal would normally have to bear in the course of pursuing its day-to-day business activities and is consequently to be classified as operating aid.

(114) The Authority notes that the tax derogations do not appear to comply with the conditions for granting operating aid set out in Chapter 5 of the Regional aid guidelines. In particular, the measures are not granted in respect of a predefined set of eligible expenditures or costs, as is stipulated in paragraph 66 of the Regional aid guidelines. The Authority's preliminary view is that operating aid to Becromal would not be compatible under Article 61(3)(c) of the EEA Agreement and the Regional aid guidelines.

4.3.1.5. Credit balance against future tax

(115) The Becromal Investment Agreement contains the following clause at Article 7.6:

'The aggregate amount of income tax levied on and paid by the Companies from 7 July 2009 to the date of signature of this Agreement shall constitute a credit balance which shall be set off against income tax which the Companies become liable to pay from the date of signature of this Agreement and during the remainder of the Contract Period.'

([39]) See Decision No 390/10/COL, Section II.3.3.

(116) In the Authority's preliminary view, the clause provides for a retroactive grant of aid. Such a grant would fall outside the scope of the scheme, and would be incompatible with the EEA Agreement, for the same reasons set out above in Section 4.3.1.1.

4.3.1.6. Large investment project and individual notification obligation

(117) In instances where the level of aid from all sources is above certain thresholds provided for under paragraph 53 of the Regional aid guidelines, an individual notification obligation applies. The total investment costs of the Becromal project appear to equate to EUR 117,25 million. The project therefore appears to qualify as a large investment project under Section 4.3 of the Regional aid guidelines ([40]). The Authority has not been provided with information with regard to the aid intensities, and therefore is not in a position to exclude the possibility that an individual notification obligation should apply to the Becromal Investment Agreement under paragraph 53 of those Guidelines. As regards the conditions for the detailed verification obligation set out in the Authority's Guidelines on criteria for an in-depth assessment of regional aid to large investment projects ([41]) ('the LIP Guidelines'), the Authority notes that the Icelandic authorities bear the burden of proof on the point that the market situations to which paragraph 57(a) and (b) of the Regional aid guidelines refer do not apply.

4.3.2. *The Kísilfélagið Investment Agreement*

4.3.2.1. The project

(118) On 17 February 2011, the State signed an investment agreement with Íslenska Kísilfélagið on tax concessions for the construction of a silicon metal production plant in Helguvík in the municipality of Reykjanesbær. The plant's production capacity is 50 000 metric tonnes of metallurgical grade silicon, and up to 20 000 metric tonnes of Silica dust per year.

4.3.2.2. Contract between Íslenska Kísilfélagið and the municipality of Reykjanesbær and the Harbour Fund

(119) The Kísilfélagið Investment Agreement makes the following reference to a contract which was signed between Íslenska Kísilfélagið on the one hand and the municpality of Reykjanesbær and the Harbour Fund on the other hand in:

'The Municipality of Reyjanesbær and the Harbour Fund have executed an Agreement with the Company on Licensing and Charges relating to the Project, including principles on property tax and land lease.' ([42]).

(120) It is not clear whether this contract is — as a whole or in part — regarded by the Icelandic authorities as having been entered into on the basis of the scheme. The Authority has not been provided with a copy or any further details of the contract to which the Kísilfélagið Investment Agreement refers. Therefore, the Authority is not in a position to assess whether the contract referred to was entered into within the scope of the scheme.

4.3.2.3. Link to an earlier investment agreement and the incentive effect

(121) The Kísilfélagið Investment Agreement refers to a previous agreement between the State and the company. This agreement concerns the same project, and was entered into on 29 May 2009, before the entry into force of the scheme. Section N of the preamble to the Kísilfélagið Investment Agreement contains the following:

'The Investment Agreement, dated 29 May 2009, also contains a commitment to enter into a complete Investment Agreement, "similar to the Investment agreements the Government has previously concluded in relation to other large-scale power intensive investment projects in Iceland". In this respect the Investment Agreement signed on 29 May 2009 was regarded as "a preliminary step towards the conclusion of a more comprehensive investment agreement between the Parties."'

(122) The Authority's preliminary view is that the agreement entered into on 29 May 2009 constitutes a special investment agreement, as referred to in the Supplementary Regulation, as described above in Section I.3.3 of this Decision.

([40]) Large investment project is an initial investment as defined by the Guidelines with an eligible expenditure above EUR 50 million, see paragraph 49 of those Guidelines.

([41]) Available at http://www.eftasurv.int/media/state-aid-guidelines/Part-III----Criteria-for-an-In-depth-Assessment-of-Regional-Aid-to-Large-Investment-Projects.pdf

([42]) Referred to in Section G of the preamble to the Kísilfélagið Investment Agreement.

(123) Based on the reasoning set out in Section 4.3.1.1 above regarding an identical provision in the Becromal Investment Agreement, the Authority has doubts as to whether the necessary incentive effect criteria have been fulfilled in the Kísilfélagið Investment Agreement. The Authority, however, notes that it does not at present have information about the status of this project.

4.3.2.4. The investment costs and aid ceiling

(124) Under the Kísilfélagið Investment Agreement, construction of the silicon metal production plant is envisaged to take place in two or more steps during a three-year period. The agreement does not provide for any start or end dates for the construction of this plant, nor for any of the steps required for such a construction to take place. Moreover, the agreement neither refers to eligible or total investment costs, nor does it stipulate the aid intensities or fix an aid ceiling.

(125) Based on the reasoning set out in Section 4.3.1.3 above regarding the Becromal Investment Agreement, the Authority has doubts as to whether the aid can be characterised as investment aid. Similarily, the Authority has not been provided with any arguments as to whether operating aid to Íslenska Kísilfélagið would be compatible with the EEA Agreement.

4.3.2.5. Addtional aid in case of amendments of the scheme

(126) The Kísilfélagið Investment Agreement contains the following clause at Article 22.8:

'In the event amendments are made to Act No 99/2010 which are regarded by the Company, as providing further incentives than already stipulated in the Act, the Government shall upon request by the Company amend this Agreement and provide the Company with the new incentives, which shall enter into force from date of signature of the amended Agreement.'

(127) This provision sets out an unconditional obligation for the State to grant additional aid to the beneficiary for a project which has already been granted aid under the scheme, should future amendments to the scheme prove more beneficial for Íslenska Kísilfélagið. This obligation is not linked to new investment. The Authority takes the preliminary view that this provision guarantees the beneficiary a right to a grant of aid going beyond the initial grant of aid made under the scheme, and therefore entails an element of aid which falls outside the scope of the scheme.

(128) Moreover, it is the Authority's preliminary view any aid granted under the clause would be properly classified as operating aid since it is not linked to an initial investment. The Authority takes the preliminary view that such a clause is incompatible with the EEA Agreement. In particular, the measures are not granted in respect of a predefined set of eligible expenditures or costs, as is stipulated in paragraph 66 of the Regional aid guidelines.

4.3.2.6. Effectiveness guarantee

(129) Article 7 of the Kísilfélagið Investment Agreement is entitled 'Government Taxes'. It contains the following clause at Article 7.9:

'The concessions, exemptions, derogations and other stipulations of Article 7.1 to 7.6 shall remain in full force and effect for 10 years from the day the relevant taxable obligation or charge obligation is activated by the Company, however never more than 13 years from date of signature of this Agreement, notwithstanding eventual changes of Act No 90/2003, on Income Tax, Act No 4/1995 on Revenues of Municipalities and Act No 38/2010, on Íslandsstofa or any other law or secondary legislation which might otherwise limit or reduce the effect intended by the provisions of Article 7.1 to 7.6. The concessions, exemptions, derogations and other stipulations of Article 7.7 to 7.8 shall remain in full force and effect for the Contract Period stipulated in Article 16 of this Agreement or any other law or secondary legislation which might otherwise limit or reduce the effect intended by the provisions of Article 7.7 to 7.8.' ([43]).

(130) It is the Authority's preliminary view that this clause has a broader application than the scope of the scheme as approved by Decision No 390/10/COL. As set out above in paragraph 35, guarantee against future legislation in itself constitutes State aid. While the tax exemptions set out in the approved scheme are limited to certain, predefined allowable derogations from statutory legislation, the text cited above appears to refer to a broader application insofar as amendments of provisions of the legislation referred to, other than those explicitly covered by the scheme, would have the effect as to 'otherwise limit or reduce the effect intended'. As set out above, one of the conditions for tax measures to be classified as investment aid is that it must be possible to quantify the aid (by assessing the precise volume of the aid granted). Under Article 7.9 of the Kísilfélagið Agreement, it would, in the Authority's preliminary view, be impossible to quantify the aid. The clause refers to possible

([43]) Article 7.9 of the Kísilfélagið Investment Agreement.

alteration of not only the Act on income tax and of the Act on municipal revenues, but also 'any other law or secondary legislation'. This wording appears to give the clause a very broad potential scope. It is the Authority's preliminary view that such an open guarantee clause would not give sufficient transparency to enable the benefit to be quantified. In that case it would entail operating aid, which in the Authority's preliminary view would be incompatible with the EEA Agreement, for the same reasons as set out above in paragraphs 114 and 128 above.

4.3.3. *The Verne Investment Agreement*

4.3.3.1. The project and the incentive effect of the aid

(131) The Verne Investment Agreement was signed on 27 September 2011. The project concerns a data centre complex in the municipality of Reykjanesbær ([44]) comprising four individual buildings housing electrical, mechanical, and IT equipment and additional administrative and electrical support buildings, serving mostly non-Icelandic international clients with the aim to commence operations in 2011.

(132) It appears that this agreement relates to the same, or a similar, investment project to a project which was the subject of the Authority's Decision No 418/10/COL on 3 November 2010 to open a formal investigation procedure into an investment agreement between the Icelandic State and Verne (see Section I.2.3 of that Decision). Following the Authority's Decision, the Icelandic authorities withdrew their notification and the Authority did not further pursue the matter as regards the previous investment agreement as such further ([45]).

(133) The Authority observes that no explicit reference is made to any previous investment agreement in the Verne Investment Agreement. Indeed, in the preamble to the Verne Investment Agreement it is stated that: 'In line with Act No 99/2010 the Investment Agreement only relates to new buildout of data centre space and infrastructure, which has not yet been undertaken.' Nonetheless, the Authority also notes that the estimated potential level of investment is USD 675 million 'over and above prior preparatory investment', whereas the estimated investment was USD 726 million in the project under assessment in the Authority's Decision No 418/10/COL. The Authority accordingly has doubts over whether these are in fact two different projects. The Verne Investment Agreement refers to Verne Holdings Ltd. together with its subsidiaries and its investors, amongst other the Wellcome Trust, Novator, and General Catalyst partners, having been taking the necessary preliminary steps towards the establishment of the project described above in paragraph 131. The beneficiary in both cases is the parent company in the Verne Group ([46]). Both agreements refer to power consumption that 'could exceed 140 MW' ([47]). The investors are at least partially the same in both cases, the location of the data centre appears to be the same in both cases (Reykjanesbær) and from the limited information provided on the project itself in the Verne Investment Agreement it appears to be the same or at least a similar project as the one that was subject to the Authority's Decision No 418/10/COL. Reference is made to the description of that project under Section I.2.3 of that Decision. If the project is the same, the construction of the project, according to the facts as established in Decision No 418/10/COL, started in early 2008. In light of this information the Authority's preliminary view is that it appears that the Verne Investment Agreement concerns a project on which work had already started at the time of the signature.

(134) On this basis, the Authority has doubts as to whether the Verne Investment Agreement can be considered to have been entered into within the scope of the scheme. Furthermore, the Authority refers to the reasoning for its Decision No 418/10/COL on opening the formal investigation procedure into the previous investment agreement with Verne, see that Decision at Section II.3.1. Moreover, on the same reasoning set out above in paragraphs 98 to 102 (regarding the Becromal Investment Agreement), the Authority has doubts as to whether the aid could be considered compatible with the EEA Agreement.

4.3.3.2. The investment costs and aid ceiling

(135) Reference is made to the discussion under paragraph 107 above, as regards the Direct business taxation guidelines. In the case of Verne Investment Agreement, the total investment costs, which appear to be regarded as eligible under the Regional aid guidelines, are fixed to USD 675 million. However, there is no clear link between the investment and the envisaged aid. Moreover, the envisaged aid has not been quantified in the Verne Investment Agreement, and no ceiling has been expressed therein either. These elements run counter to the provisions of the scheme as approved.

([44]) The Verne Investment Agreement refers to the date centre complex as 'initially' in Reykjanesbær.
([45]) See the Authority's Decision No 261/12/COL at Section I.1.
([46]) See footnote 16 in this Decision.
([47]) See footnote 8 in Decision No 418/10/COL and paragraph 5 in the Verne Investment Agreement's preamble.

(136) Accordingly, applying the reasoning set out in Section 4.3.1.3 above with regard to the Becromal Investment Agreement, it is the Authority's preliminary view that the Verne Investment Agreement does not comply with the conditions set out in Decision No 390/10/COL, since the agreement does not demonstrate that the rules on eligible expenses under the Regional aid guidelines are met when fixing the eligible investment costs. In this respect, there is no explicit obligation to carry out the second phase of the project, the aid appears not to have been quantified and there is no aid ceiling expressed in the agreement (which means that the Direct business taxation guidelines have not been complied with). Similarly, the Authority cannot at this point conclude that operating aid can be found compatible under the Regional aid guidelines.

4.3.3.3. Additional aid in case of amendments of the scheme

(137) Article 23.7 of the Verne Investment Agreement contains an identical clause as regards the unconditional right to request increased aid, should the scheme be expanded, as the Kísilfélagið Investment Agreement, referred to at paragraphs 126 to 128 above. The Authority has the same doubts as expressed in the cited paragraphs.

4.3.3.4. Effectiveness guarantee

(138) Article 7.9 contains an identical clause as the Kísilfélagið Investment Agreement, cited above at paragraph 129. Based on the reasoning set out in paragraph 130, the Authority has doubts as to whether the effectiveness guarantee can be regarded as compatible with the EEA Agreement.

4.3.3.5. Large investment project

(139) In the light of the total investment costs referred to in the Verne Investment Agreement, it cannot be excluded that the project qualifies as a large investment project under Section 4.3 of the Regional aid guidelines. The Authority has not been provided with information which would exclude the possibility that the individual notification procedure provided for under that section should apply to the project.

4.3.4. *Conclusion regarding aid to Becromal, Kísilfélagið and Verne*

(140) On the basis of the above, the Authority has doubts as to whether aid to Becromal, Kísilfélagið and Verne has been granted within the scope of the scheme. The Authority takes the preliminary view that the agreements were concluded outside the scope of the approved scheme, and should therefore be classified as individual aid that should have been notified to the Authority.

(141) Furthermore, the Authority has doubts as to whether the aid to Becromal, Kísilfélagið and Verne was granted before the work started on the projects, and as to whether that aid was limited to a defined investment project.

(142) Moreover, the Authority has doubts as to whether a provision entailing an unconditional obligation for the State to grant additional aid in the case of amendments made to the scheme can be classified as investment aid, and the Authority has not been provided with reasoning as to the compatibility of such operating aid. Finally, the Authority has doubts as to the compatibility of the effectiveness guarantee.

(143) Lastly, it is the preliminary view of the Authority that it cannot be excluded that the aid granted may be properly subject to the procedure provided for under Section 4.3 of the Regional aid guidelines for large investment projects, in particular as regards the Becromal and Verne investment agreements.

4.3.5. *The Thorsil Investment Agreement*

(144) The Thorsil Investment Agreement was signed on 30 December 2010. It concerns a silicon metal production plant to be built in the municipality of Ölfus, with an annual production capacity of approximately 50 000 metric tonnes. The plant's start-up is scheduled to take place in October 2014. The Authority has the following doubts as to whether certain elements of the agreement fulfil the criteria set out in the scheme:

(145) First, the Thorsil Investment Agreement contains an identical clause to the one set out in the Becromal Investment Agreement (see Section 4.3.1.4 above), on the possibility of an extension of the aid period beyond the maximum duration provided for in the scheme. Following the same reasoning as set out at paragraphs 113 to 114 above, the Authority has doubts as to whether the agreement falls within the scope of the scheme and whether such a clause is compatible with the EEA Agreement, as it would be operational aid.

(146) Second, reference is made to the discussion under paragraph 107 above, as regards the Direct business taxation guidelines. In the case of the Thorsil Investment Agreement, the total investment

costs are not presented and there is no link between the investment and the envisaged aid, which has not been quantified in the agreement, as stipulated in the scheme as approved. Moreover, no aid ceiling has been expressed.

(147) Accordingly, the Authority has doubts as to whether the Thorsil Investment Agreement complies with the conditions set out in Decision No 390/10/COL, insofar as the agreement does not demonstrate that the rules on eligible expenses under the Regional aid guidelines have been met when fixing the eligible investment costs; there is no explicit obligation to carry out the second phase of the project, the aid appears not to have been quantified and no aid ceiling has been expressed in the agreement and thus the requirements of the Direct business taxation guidelines have also not been met. Similarly, the Authority cannot conclude that any operating aid that might be involved can be found compatible with EEA law under the Regional aid guidelines.

4.3.6. *The GMR Investment Agreement*

(148) On 7 May 2012, the State entered into an agreement with GMR Endurvinnslan on the granting of tax exemptions for the construction of a recycling plant at Grundartangi in the municipality of Hvalfjarðarsveit. The agreement states that GMR intends to commence production at the end of 2012 and to have the plant fully operational in 2014. The agreement does not contain any further description of the project, its scale or the volume of the investment and the Authority is not in possession of any further details to verify whether the agreement was entered into within the scope of the scheme in this respect.

(149) The Authority notes that the GMR Investment Agreement contains an identical clause to that found in the Kísilfélagið Investment Agreement (see paragraphs 126 to 128 above) as regards the establishment of an unconditional right to request increased aid, should the scheme be expanded. The Authority has the same doubts regarding the inclusion of this clause in the GMR Investment Agreement as those which it has expressed in the cited paragraphs.

(150) Furthermore, the total investment costs are not presented in the GMR Investment Agreement. Nor is there a link between the investment and the envisaged aid, which was not quantified in the agreement, as is stipulated in the scheme as approved. Nor has an aid ceiling been expressed in the agreement.

(151) Article 7.9 contains an identical clause as the Kísilfélagið Investment Agreement, cited above at paragraph 129. Based on the reasoning set out in paragraph 130, the Authority has doubts as to whether the effectiveness clause can be regarded as compatible with the EEA Agreement.

(152) Based on its reasoning regarding the Becromal Investment Agreements, discussed in Section 4.3.1.3 above, the Authority has doubts as to whether the aid can properly be characterised as investment aid. Similarily, the Authority has not been provided with any arguments as to whether operating aid to GMR would be compatible with the EEA Agreement.

(153) Article 22.7 of the GMR Investment Agreement contains an identical clause to that which is set out in the Kísilfélagið Investment Agreement (see paragraphs 126 to 128 above) as regards the unconditional right to request increased aid, should the scheme be expanded. The Authority has the same doubts as expressed in the cited paragraphs.

4.3.7. *The Marmeti Investment Agreement*

(154) The last agreement entered into on the basis of the scheme is an agreement signed after the initiation of the present case, dated on 28 January 2013. This agreement was concluded between the State and Marmeti, a company established in 2012 for the construction and operation of a fish processing factory in Sandgerði.

(155) The envisaged start-up of the factory is at the beginning of 2013. Since the Investment Agreement was only signed in late January 2013, this raises questions as to whether work may in fact have already started on the project before the signing of the agreement, contrary to the requirements of the scheme as approved ([48]). The Authority therefore has doubts as to whether the agreement was concluded within the scope of the scheme.

(156) The agreement does not contain any further description of the project, its scale or the volume of the investment, quantification of the aid, aid ceiling or aid intensities and the Authority is not at this point in possession of any further details to verify whether the agreement is in compliance with these conditions of the scheme.

([48]) Article 21 of the Act, see Decision No 390/10/COL at Section I.2.13.

(157) The Authority notes that the agreement contains, at Article 20.7, an identical clause as that which is set out in the Kísilfélagið Investment Agreement (paragraphs 126 to 128 above) as regards the unconditional right to request increased aid, should the scheme be expanded. The Authority has the same doubts as expressed in the cited paragraphs.

(158) Based on its line of reasoning regarding the Becromal Investment Agreements, discussed in Section 4.3.1.3. above, the Authority has doubts as to whether the aid can be characterised as investment aid. Similarily, the Authority has not been provided with any arguments as to whether possible operating aid to Marmeti would be compatible with the EEA Agreement.

(159) Article 7.9 of the Marmeti Investment Agreement contains an identical clause as the Kísilfélagið Investment Agreement, cited above at paragraph 129. Based on the reasoning set out in paragraph 130, the Authority has doubts as to whether the effectiveness guarantee can be regarded as compatible with the EEA Agreement.

4.3.8. *Conclusion*

(160) As set out above, the Authority has doubts as to whether aid granted under the Becromal Investment Agreement, the Kísilfélagið Investment Agreement and the Verne Investment Agreement is granted within the scope of the scheme.

(161) Moreover, the Authority has doubts as to whether the Marmeti Investment Agreement is concluded within the scope of the scheme, as regards the incentive effect requirement. Further, the Authority has doubts as to whether certain clauses of the Marmeti Investment Agreement grant aid outside the approved scheme.

(162) Further, the Authority has doubts as to whether elements of the Thorsil Investment Agreement and the GMR Investment Agreement provide for aid granted outside the approved scheme.

(163) The Authority thus has doubts as to whether aid granted under all six Investment Agreements can be considered compatible with the EEA Agreement.

5. **Conclusion**

(164) Based on the information submitted by the Icelandic authorities, the Authority cannot exclude the possibility that the aid measures described above constitute State aid within the meaning of Article 61(1) of the EEA Agreement. The Authority also has doubts as to whether these measures comply with Article 61(3) of the EEA Agreement, in conjunction with the requirements laid down in the Authority's Regional aid guidelines. The Authority, therefore, doubts that the above measures are compatible with the functioning of the EEA Agreement.

(165) Consequently, and in accordance with Article 4(4) in Part II of Protocol 3, the Authority is obliged to open the formal investigation procedure provided for in Article 1(2) in Part I of Protocol 3. The decision to open a formal investigation procedure is without prejudice to the final decision of the Authority, which may conclude that the measures in question are compatible with the functioning of the EEA Agreement.

(166) In light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) in Part I of Protocol 3, invites the Icelandic authorities to submit their comments within one month of the date of receipt of this Decision.

(167) In light of the foregoing considerations, within one month of receipt of this Decision, the Authority requests the Icelandic authorities to provide all documents, information and data needed for assessment of the compatibility of the scheme, as amended by Regulation (EU) No 1150/2010, the notified proposed amendments and the six investment agreements referred to in this Decision.

(168) The Authority requests the Icelandic authorities to forward a copy of this Decision to the potential recipients of the aid immediately.

(169) The Authority must remind the Icelandic authorities that, according to Article 14 in Part II of Protocol 3, any incompatible aid unlawfully granted to the beneficiaries will have to be recovered, unless (exceptionally) this recovery would be contrary to a general principal of EEA law,

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure provided for in Article 1(2) in Part I of Protocol 3 is opened into the investment incentives scheme, with amendments notified by the Icelandic authorities, and as amended by Regulation (EU) No 1150/2010, implemented by the Icelandic authorities.

Article 2

The formal investigation procedure provided for in Article 1(2) in Part I of Protocol 3 is opened into the following investment agreements entered into by the Icelandic authorities:

1. agreement entered into on 30 December 2010 between the State and Becromal Iceland ehf., Becromal Properties ehf., Stokkur Energy efh. and Becromal SpA;

2. agreement entered into on 30 December 2010 between the State and Thorsil ehf., Stokkur Energy ehf. and Timminco Limited;

3. agreement entered into on 17 February 2011 between the State and Íslenska Kísilfélagið ehf., Tomahawk Development á Íslandi ehf. and GSM Enterprises LLC;

4. agreement entered into on 27 September 2011 between the State and Verne Real Estate II ehf. and Verne Holdings Ltd;

5. agreement entered into on 7 May 2012 between the State and GMR Endurvinnslan ehf.; and

6. agreement entered into on 28 January 2013 between the State and Marmeti ehf.

Article 3

The Icelandic authorities are invited, pursuant to Article 6(1) in Part II of Protocol 3, to submit their comments on the opening of the formal investigation procedure within one month from the notification of this Decision.

Article 4

The Icelandic authorities are requested to provide within one month from notification of this Decision all documents, information and data needed for assessment of the compatibility of the aid measures.

Article 5

This Decision is addressed to Iceland.

Article 6

Only the English language version of this Decision is authentic.

Done at Brussels, 30 April 2013.

For the EFTA Surveillance Authority

Oda Helen SLETNES
President

Sabine MONAUNI-TÖMÖRDY
College Member

V

(Øvrige meddelelser)

PROCEDURER VEDRØRENDE GENNEMFØRELSEN AF KONKURRENCEPOLITIKKEN

EUROPA-KOMMISSIONEN

Meddelelse fra Kommissionen offentliggjort i henhold til artikel 27, stk. 4, i Rådets forordning (EF) nr. 1/2003 i sag AT.39678 Deutsche Bahn I, AT.39731 Deutsche Bahn II og AT.39915 Deutsche Bahn III

(2013/C 237/05)

1. INDLEDNING

1. I henhold til artikel 9 i Rådets forordning (EF) nr. 1/2003 af 16. december 2002 om gennemførelse af konkurrencereglerne i traktatens artikel 101 og 102 ([1]) kan Kommissionen — når den agter at vedtage en afgørelse, hvorefter en overtrædelse kræves bragt til ophør, og de deltagende virksomheder tilbyder at afgive tilsagn, der imødekommer de konkurrenceproblemer, som Kommissionen har påpeget i sin foreløbige vurdering — ved afgørelse gøre disse tilsagn bindende for virksomhederne. En sådan afgørelse kan vedtages for en bestemt periode, og i afgørelsen konkluderes det, at der ikke længere er grund til, at Kommissionen griber ind. Inden en afgørelse vedtages i henhold til artikel 9 i forordning (EF) nr. 1/2003, skal Kommissionen i henhold til artikel 27, stk. 4, i samme forordning offentliggøre et kortfattet resumé af sagen og hovedindholdet af de afgivne tilsagn. Alle interesserede parter kan fremsætte deres bemærkninger hertil inden for den af Kommissionen fastsatte frist.

2. RESUMÉ AF SAGEN

2. Kommissionen vedtog den 6. juni 2013 en foreløbig vurdering efter artikel 9, stk. 1, i forordning (EF) nr. 1/2003 rettet til Deutsche Bahn AG og virksomhedens datterselskaber DB Energie GmbH (»DB Energie«), DB Mobility Logistics AG, DB Fernverkehr AG og DB Schenker Rail Deutschland AG ([2]).

3. Kommissionen påpegede i sin foreløbige vurdering det konkurrenceproblem, at DB-koncernen kan have misbrugt sin dominerende stilling på markedet for levering af kørestrøm i Tyskland ved at opkræve kørestrømspriser hos konkurrenter, der skabte et avancepres på markederne for passagerbefordring over længere jernbanestrækninger og for jernbanegodstransport, hvilket er en overtrædelse af artikel 102 i TEUF.

4. Det er Kommissionens foreløbige vurdering, at DB Energie er dominerende på markedet for kørestrøm til jernbanevirksomheder i Tyskland. Kørestrøm er en nødvendighed for jernbanevirksomheder, når de skal konkurrere på de tyske jernbanetransportmarkeder. DB Energie har siden 2003 markedsført kørestrøm til jernbanevirksomheder som en service, der omfatter alt, hvilket medfører en samling af prisen for den forbrugte strøm (elprisen) og prisen for brug af kørestrømsnettet (netadgangsafgiften).

5. Kommissionen fandt i sin foreløbige vurdering, at prissystemet og navnligt de rabatter, der tilgodeså jernbaneoperatører fra DB-koncernen mere end deres konkurrenter, kan have hæmmet konkurrencen på markederne for jernbanegodstransport og for passagerbefordring over længere jernbanestrækninger. På disse markeder ser Kommissionen et problem i, at det prissystem for kørestrøm, som DB Energie anvender, kan medføre en forskel på den pris for kørestrøm, der opkræves af konkurrenter, og den pris,

([1]) EFT L 1 af 4.1.2003, s. 1. Med virkning fra 1. december 2009 er EF-traktatens artikel 81 og 82 blevet til henholdsvis artikel 101 og 102 i traktaten om Den Europæiske Unions funktionsmåde (»TEUF«). De to sæt bestemmelser er i alt væsentligt identiske. I forbindelse med denne meddelelse læses henvisningerne til artikel 101 og 102 i TEUF, hvor det er relevant, som henvisning til EF-traktatens artikel 81 og 82.

([2]) Der henvises i det følgende til Deutsche Bahn AG og virksomhedens datterselskaber som »DB-koncernen«.

som DB's jernbanetransportvirksomheder opkræver fra forbrugere for jernbanetransport. Den forhindrer konkurrenter, der er lige så effektive, i at få overskud eller reducerer deres fortjenstmargin kunstigt. Kommissionens undersøgelse har foreløbig konkluderet, at denne situation forårsager konkurrenceproblemer på markederne for jernbanegodstransport og for passagerbefordring over længere jernbanestrækninger.

6. I november 2010 afsagde den tyske Bundesgerichthof en dom, hvoraf det fremgår, at kørestrømsnettet skal anses for et energinet, og at adgangsbetingelserne og -afgifterne skal reguleres efter den tyske energilov (*Energiewirtschaftsgesetz* — EnWG) ([1]). Som følge heraf skal DB Energie opkræve netadgangsafgiften for sig, således at tredjepartsleverandører af el (dvs. leverandører, der ikke tilhører DB-koncernen) også kan konkurrere med DB Energie om at levere el til jernbanevirksomheder ([2]).

3. HOVEDINDHOLDET I DE TILBUDTE TILSAGN

7. DB-koncernen er ikke enig i Kommissionens foreløbige vurdering, ifølge hvilken den kan have misbrugt sin dominerende stilling på markedet for levering af kørestrøm til tyske jernbanevirksomheder. Virksomheden har ikke desto mindre afgivet tilsagn i henhold til artikel 9 i forordning (EF) nr. 1/2003 for at løse de konkurrenceproblemer, som Kommissionen har påpeget. De vigtigste elementer i tilsagnene er beskrevet nedenfor.

8. Senest tre måneder efter at have modtaget meddelelsen om Kommissionens afgørelse, som gør tilsagnene bindende for DB-koncernen, og tidligst den 1. januar 2014, vil DB Energie indføre et nyt prissystem for kørestrøm med separate priser for levering af elektricitet og for netadgangsafgifter, hvilket den relevante tyske tilsynsmyndighed (*Bundesnetzagentur*) har godkendt. Det nye prissystem er designet til at sikre, at tredjepartsleverandører af el kommer ind på markedet for levering af el til jernbanevirksomheder ([3]).

9. I dette nye system vil DB Energie opkræve de samme priser for el af alle jernbanevirksomheder uden rabatter for volumen eller varighed.

10. DB Energie vil foretage en tilbagebetaling til alle jernbanevirksomheder i Tyskland, der ikke tilhører DB-koncernen, bestående af en engangsrefusion med tilbagevirkende kraft på 4 % af deres kørestrømsudgifter i den etårige periode, der går forud for det nye prissystems ikrafttrædelse.

11. DB Energie og DB Mobility and Logistics AG vil hvert år fremlægge oplysninger for Kommissionen, således at den kan vurdere, om prisniveauet for de kørestrøms- og transportydelser, som DB-koncernen har opkrævet, kunne medføre et avancepres. DB Energie vil også på forhånd anmelde enhver ændring i virksomhedens elpriser til Kommissionen.

12. Tilsagnene vil senest træde i kraft tre måneder efter meddelelsen om Kommissionens afgørelse. De vil være gældende i fem år ([4]) efter meddelelsen om Kommissionens afgørelse eller indtil 20 % af den kørestrøm, der købes af DB-koncernens konkurrenter, stammer fra tredjepartsleverandører af el. DB-koncernen vil også udpege en person, som skal føre tilsyn med, at tilsagnene overholdes.

13. Tilsagnene er offentliggjort på Generaldirektoratet for Konkurrences hjemmeside: http://ec.europa.eu/competition/index_en.html

([1]) *Bundesgerichtshofs* dom af 9. november 2010, sag *EnVR 1/10*.

([2]) Der findes yderligere oplysninger om ændringen af prissystemet og det nye systems betingelser på DB Energies hjemmeside (udelukkende på tysk): http://www.dbenergie.de/dbenergie-de/netzbetreiber/netzbetreiber_bahnstromnetz/2500898/bahnstromnetz_konsultation.html

([3]) Ydermere vil indførelsen af det nye system blive suppleret af en forpligtelse til at adskille regnskaber og undlade at dele oplysninger imellem de forskellige aktivitetsområder i DB Energie, eftersom virksomheden både forvalter kørestrømsnettet og leverer el.

([4]) DB Energies tilsagn om ikke at give rabatter baseret på varighed for virksomhedens levering af el vil kun vare tre år.

4. OPFORDRING TIL AT FREMSÆTTE BEMÆRKNINGER

14. Med forbehold for resultatet af markedstesten agter Kommissionen at vedtage en afgørelse i henhold til artikel 9, stk. 1, i forordning (EF) nr. 1/2003, hvorved de tilsagn, der er sammenfattet ovenfor og offentliggjort på Generaldirektoratet for Konkurrences websted, erklæres for bindende.

15. I overensstemmelse med artikel 27, stk. 4, i forordning (EF) nr. 1/2003 opfordrer Kommissionen interesserede parter til at fremsætte bemærkninger til de afgivne tilsagn. Bemærkninger skal være Kommissionen i hænde senest en måned efter datoen for offentliggørelsen af denne meddelelse. Alle, der fremsætter bemærkninger, anmodes om tillige at indsende en ikke-fortrolig version af deres bemærkninger, hvori enhver oplysning, som de anser for at være forretningshemmeligheder, og andre fortrolige oplysninger er slettet og efter omstændighederne erstattet af et ikke-fortroligt sammendrag eller af ordene »forretningshemmelighed« eller »fortroligt«. I henhold til artikel 16 i forordning (EF) nr. 773/2004 skal ethvert sådant krav om fortrolighed dokumenteres ved at anskueliggøre, hvorfor offentliggørelse af de pågældende oplysninger vil være til alvorlig skade for virksomheden.

16. Alle svar og bemærkninger bør begrundes og indeholde alle relevante oplysninger. Hvis der peges på et problem i forbindelse med nogen af de tilbudte tilsagn, bedes der desuden givet et forslag til, hvordan det kan løses.

17. Bemærkningerne kan med angivelse af referencen AT.39678/AT.39731/AT.39915 — Deutsche Bahn I/II/III, sendes til Kommissionen pr. e-mail (COMP-GREFFE-ANTITRUST@ec.europa.eu), pr. fax (+32 22950128), eller pr. brev til følgende adresse:

Europa-Kommissionen
Generaldirektoratet for Konkurrence
Registreringskontoret for Kartelsager
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

ANDET

EUROPA-KOMMISSIONEN

Offentliggørelse af en ansøgning i henhold til artikel 50, stk. 2, litra a), i Europa-Parlamentets og Rådets forordning (EU) nr. 1151/2012 om kvalitetsordninger for landbrugsprodukter og fødevarer

(2013/C 237/06)

Denne offentliggørelse giver ret til at gøre indsigelse mod ansøgningen, jf. artikel 51 i Europa-Parlamentets og Rådets forordning (EU) nr. 1151/2012 ([1]).

ENHEDSDOKUMENT

RÅDETS FORORDNING (EF) Nr. 510/2006

om beskyttelse af geografiske betegnelser og oprindelsesbetegnelser for landbrugsprodukter og fødevarer ([2])

»SZENTESI PAPRIKA«

EF-Nr.: HU-PGI-0005-0912-30.11.2011

BGB (X) BOB ( )

1. **Betegnelse**

»Szentesi paprika«

2. **Medlemsstat eller tredjeland**

Ungarn

3. **Beskrivelse af landbrugsprodukt eller fødevaren**

3.1. *Produkttype*

Kategori 1.6. Frugt, grøntsager og korn, også forarbejdet

3.2. *Beskrivelse af produktet med betegnelsen i punkt 1*

Den beskyttede geografiske betegnelse »Szentesi paprika« er en betegnelse for frugter af de anførte sortstyper og sorter af *Capsicum annuum*, der er dyrket ved fremdrivning.

Når »Szentesi paprika«-produkterne bringes i omsætning, skal de være sunde og intakte, og de forskellige sortstyper skal have følgende egenskaber:

a) Hvide peberfrugter beregnet til fyldte peberfrugter (*Capsicum annuum* L. *var. grossum*)

([1]) EUT L 343 af 14.12.2012, s. 1.
([2]) Erstattet af forordning (EU) nr. 1151/2012.

Når den er moden, er den hvide »Szentesi paprika« fedtet at føle på, og skindet er jævnt og glat. Frugten bliver ødelagt, når den revner, er afrundet og sammenkrøllet i enden, og kødet er tykt. Overfladen er glat og skinnende, og farven er gullighvid (elfenbensfarvet). Frugten har en konisk form, er 60-120 mm lang og 40-70 mm bred. Den har for det meste tre eller fire kamre. Kødet er 4-7 mm tykt, konsistensen er fast, og skindet er tyndt. Frugten har en intens duft af paprika og er velsmagende og mild.

De dyrkede sorter er følgende: Hó, Cibere, Century, Hurricane, Bronson, Emese, Kurca, Creta, Joker, Karma, Bravia(RZ35862), Kalota, Brendon, Antal, Zalkod, Censor, Celtic, Cinema, Glorietta, Dimentio, E-49.39615, Galga, Claudius og Skytia.

b) Spidse, stærke peberfrugter (*Capsicum annuum* L. *var. longum*)

Den spidse stærke »Szentesi paprika« har en skinnende, glat eller lidt bølget overflade og en lang, spids facon. Den er lyse-, mellem- eller mørkegrøn, 150-250 mm lang og 20-50 mm bred. Den har for det meste to eller tre kamre, kødet er 3-4 mm tykt, konsistensen er fast, og skindet er tyndt. Frugten har en intens duft af paprika og en krydret, behagelig smag.

De dyrkede sorter er følgende: Daras, Rush, Sarah, Fighter, Kard, Thunder og Kais.

De dyrkede sorters smagsstyrke er målt til 2 500-5 000 på Scoville-skalaen.

c) Kápia-peberfrugter (*Capsicum annuum* L. *var. grossum*)

»Szentesi paprika« i Kápia-gruppen har en konisk facon og er lidt fladtrykt. Den har en glat, skinnende overflade og har på høsttidspunktet en fløjlsagtig, mørkerød farve. Den er 60-120 mm lang og 40-70 mm bred. Den har typisk to eller tre kamre. Kødet er 4-7 mm tykt, konsistensen er fast, og skindet er af mellemtykkelse. Frugten er mild og har en intens, sød smag og en duft af stødt paprika.

De dyrkede sorter er følgende: Kárpia (T 112), Kapirex, Karpex og Mágus.

d) Tomatformede peberfrugter (*Capsicum annuum* L. *var. grossum*)

Den tomatformede »Szentesi paprika« har en meget karakteristisk facon: Den ser ud som en fladtrykt kugle med en glat, skinnende overflade og er dybrød på høsttidspunktet. Frugten er 60-120 mm i diameter, 40-60 mm lang, har tre eller fire kamre, og kødet er 5-7 mm tykt. Den har en fast konsistens, et tyndt skind, en intens duft af paprika, og den er mild.

De dyrkede sorter er følgende: Pritavit, Kabala og Bihar.

De sorter af ovenstående typer, som kan dyrkes, kan variere fra år til år.

3.3. *Råvarer (kun for forarbejdede produkter)*

—

3.4. *Foder (kun for produkter af animalsk oprindelse)*

—

3.5. *Specifikke etaper af produktionen, som skal finde sted i det afgrænsede geografiske område*

Hver af følgende etaper ved produktion af »Szentesi paprika« skal finde sted i det afgrænsede geografiske område, jf. punkt 4:

— produktion og dyrkning af peberfrøplanter

— integreret økologisk produktion af de forskellige sortstyper og sorter, herunder:

— valg af produktionsperiode

— udvikling af dyrkningsområdet

— jordkultivering og grundgødskning

— udplantning

— forberedelse af plantestøtte

— planteplejeaktiviteter (fytoteknologi)

— kunstvanding og tilføring af næringsstoffer

— klimaregulering

— anvendelse af miljøvenlige, integrerede plantebeskyttelsesprocedurer

— høst, klargøring af produktet, midlertidig opbevaring og oplagring

— tilintetgørelse af lagre af peber, udvikling og desinfektion af produktionsudstyr.

3.6. *Særlige regler vedrørende udskæring, rivning eller emballering osv.*

Klassificering, emballering og mærkning af »Szentesi paprika« sker i producentens forretningslokaler eller ethvert andet egnet forretningssted inden for det afgrænsede geografiske område.

Ved emballering af hele partier: bakke, kurv, polyethylenpose (3, 5, 20, 30, 40, 50, 60 eller 80 peberfrugter pr. enhed); efter vægt: kurv, raschel-net (0,35, 0,5, 0,7, 1 eller 2 kg peberfrugter pr. enhed) eller kasse: i M10-, M20- eller M30-pakker (2,5, 10, 12 eller 14 kg peberfrugter pr. enhed). Emballeringsformen for de forskellige sortstyper kan til enhver tid variere alt efter de kommercielle behov.

For at bevare den karakteristiske kvalitet og homogenitet for de forskellige sortstyper og sorterne deraf samt den karakteristiske smag, duft, konsistens og intakte tilstand for »Szentesi paprika« (BGB) og for at sikre produkternes sporbarhed skal emballeringen ske inden for det afgrænsede geografiske område.

3.7. *Specifikke mærkningsregler*

— Ordkombinationen »Szentesi paprika« skal fremgå af emballagen.

— Der skal også være en etiket med en stregkode, som sikrer, at »Szentesi paprika« kan spores.

4. Præcis afgrænsning af det geografiske område

Produktionen af »Szentesi paprika« med beskyttet geografisk betegnelse (BGB) er hjemmehørende i et sammenhængende område i distriktet Csongrád.

Produktionen af »Szentesi paprika« sker inden for de administrative grænser for følgende lokaliteter i distriktet Csongrád: Derekegyháza, Fábiánsebestyén, Felgyő, Mindszent, Nagymágocs, Nagytőke, Szegvár og Szentes.

5. Tilknytning til det geografiske område

5.1. *Det geografiske områdes egenart*

De faktorer, der påvirker produktionen af kvalitetspeberfrugter, navnlig temperatur og lys, samt jordbunden og de hydrografiske egenskaber har skabt gunstige betingelser for udviklingen af den kunstvandede peberproduktion i regionen Szentes, som de såkaldte »bulgarske gartnere« (som producerede grøntsager ved hjælp af specialiserede ikke-industrielle metoder, fremdrivning i mistbænke og kunstvanding), der slog sig ned i regionen i anden halvdel af det 19. århundrede, lagde grunden til.

Produktionsregionen Szentes ligger i den sydøstlige del af Ungarn i et af de lavest liggende bækkener i området, Alföld (Den Store Ungarske Slette). Regionen indtager en særlig plads rent topografisk, idet den har landets lavest liggende landområde med skråninger på tre sider fra nabodistrikterne til Tiszadalen. Det vigtigste vandløb i regionens hydrografiske system er Tisza-floden, der også definerer hele

det geografiske fysiognomi. Den dominerende jordbundstype her er kulsyreholdig og af typen solonetz/eng-chernozem som følge af de rigelige mængder overfladevand i regionen. Jorden i produktionsområdet er i god fysisk tilstand. Den har en let smuldrende tekstur, varmes hurtigt op, har en subalkalisk pH-værdi, en god styring af vand og næringsstoffer, et højt humusindhold og et tykt muldlag.

Ved produktion af »Szentesi paprika« omfatter de vigtigste klimafaktorer, der gør frugten så værdifuld, lyset, antallet af solskinstimer, temperaturen og den tilførte varmemængde. De karakteristiske kontinentale klimaforhold er dominerende i produktionsregionen Szentes. Antallet af solskinstimer er jævnt fordelt i hele regionen, som gennemsnitlig har 2 050 solskinstimer om året. Målt efter årlig middeltemperatur er produktionsregionen en af landets varmeste. Den årlige middeltemperatur er + 10-11 °C, mens varmesummen i vækstsæsonen er 3 200-3 300 °C. Dette er særdeles gunstigt for produktion af peberfrugter, der har brug for masser af varme.

Derimod har regionen landets laveste nedbørsmængde med en årlig middelværdi på 500-550 mm nedbør. Typisk falder 40 % af nedbøren i vinterhalvåret og 60 % i sommerhalvåret. Den vandkrævende peberproduktion har kun kunnet lade sig gøre takket være den kunstvanding, der har udviklet sig som følge af regionens gunstige hydrografiske betingelser, og som blev indført af de såkaldte »bulgarske gartnere«.

5.2. *Produktets egenart*

De vigtigste organoleptiske værdier og egenskaber ved »Szentesi paprika« med oprindelse i det geografiske område er: en usædvanlig velsmagende, stærk, sød eller krydret smag; en intens duft af paprika eller en duft, der minder om stødt paprika; tyndt skind. Frugtkødet er 3-7 mm tykt, hvilket gør det muligt fuldt ud at nyde smagen og smagsstofferne i frugten — der normalt indtages i frisk form.

Hvid »Szentesi paprika«: Når frugten er moden, er den fedtet at føle på, og skindet er jævnt og glat. Frugten bliver ødelagt, når den revner, og er afrundet og sammenkrøllet i enden, og kødet er tykt. Friske peberfrugter har en meget karakteristisk duft og saftfuldhed, eller som forbrugerne populært udtrykker det: » »Szentesi paprika« smager af noget«.

Den spidse, stærke »Szentesi paprika« har et skinnende, glat eller lidt bølgeformet skind og har en spids, langstrakt facon. Kødet har en fast konsistens. Frugten har en intens duft af paprika og en krydret, behagelig smag. »Szentesi paprika« i Kápia-gruppen har en konisk facon og er lidt fladtrykt. Kødet har en fast konsistens. Skindet er mellemtykt. Frugten har en glat, skinnende overflade og en meget attraktiv fløjlsagtig, mørkerød farve som følge af det geografiske miljø (lyset og varmen).

Den tomatformede »Szentesi paprika« har en meget karakteristisk facon: Den ser ud som en fladtrykt kugle. Til trods for kødets tykkelse har den også et meget tyndt skind, og frugtens overflade er glat. På høsttidspunktet har den en dybrød farve.

5.3. *Årsagssammenhængen mellem det geografiske område og produktets kvalitet eller egenskaber (for BOB) eller produktets særlige egenskaber, omdømme eller andre kendetegn (for BGB)*

Tilknytningen til det geografiske område bygger på produktets mangeårige omdømme og den lokale ekspertise hos producenterne af »Szentesi paprika«, der er nedarvet gennem generationer.

»Szentesi paprika«-frugternes omdømme

De såkaldte »bulgarske gartnere«, der slog sig ned i regionen i anden halvdel af det 19. århundrede, lagde grunden til udviklingen af kunstvandet peberproduktion i regionen Szentes. Lige siden har man uden ophold produceret den velansete »Szentesi paprika«. Produktet nyder den dag i dag stor anseelse og fik førstepræmie ved den kombinerede landbrugsudstilling og havemesse i Debrecen i 2006, hvor der deltog omkring 300 ungarske og udenlandske virksomheder. I 2007 vandt den søde peber, der er beregnet til fortæring i frisk tilstand, Magyar Termék Nagydíj (ungarsk pris for kvalitetsprodukter).

En lang række historiske data bevidner den flere hundrede år gamle sammenkædning mellem »Szentesi paprika«-frugternes omdømme og det geografiske område. Forekomsten af sød peber i Ungarn kan spores tilbage til den gang i vinteren 1875-76, hvor de »bulgarske gartnere« slog sig ned i Úsztató major i regionen Szegvár. Ifølge den store landbrugstælling i 1895 var 92,74 % af Ungarns samlede produktion af peberfrugter koncentreret i den sydøstlige del af landet, i området Szentes. Gartnere lejede noget jord og udnyttede fordelen ved, at jordbunden i distriktet Csongrád er humusrig og alluvial af typen eng-chernozem og dermed hurtigt varmes op. Så vidt det var muligt, valgte de at slå sig ned på svagt skrånende landområder. For at kunne starte dyrkningen tidligt anvendte de forspirede frø og mistbænke. De dyrkede også mellemkulturer i bede, f.eks. dyrkning af agurkefrøplanter side om side med peberfrugter, idet agurkerne så blev stående tilbage, når peberfrugterne blev udplantet. De enkelte frøplanter blev udplantet med en lille klump jord. Disse pionerer indførte omfattende regelmæssig

kunstvanding: Til kunstvanding anvendte de opvarmet stillestående vand eller langsomt rindende vand fra lavvandede vandområder. De havde en unik metode til at udvinde og bortlede vand. Man anvendte på daværende tidspunkt i området Szentes de såkaldte »kæde-spandshjul«, der kunne indstilles efter det varierende vandniveau.

Lokal ekspertise

Varmestyringen i jordbundens overflade er meget god i produktionsregionen Szentes. Da jordbunden, hvor man dyrker »Szentesi paprika«, absorberer mere varme end den frigiver via udstråling ved solopgang, stiger varmetilførslen i jordbunden og luften ovenfor, hvilket hæver temperaturen. Det afbalancerede mikroklima, der opstår via den harmoniske varmetilførsel og produktionsmetoderne med kunstvanding, som de »bulgarske gartnere« indførte, giver tilsammen den usædvanlige smag, som den varme- og vandkrævende »Szentesi paprika« har.

Oven i de naturbetingede faktorer kommer så de lokale landbrugeres aktiviteter og de praktiske erfaringer med produktion ved fremdrivning (varmeregulering, ventilation, skygge, plantepleje), som er nedarvet gennem generationer. En sådan ekspertise har været med til at udligne de negative konsekvenser af de ekstreme vejrforhold i de seneste årtier, og man har kunnet sikre og om muligt bevare den smag og farve, som »Szentesi paprika« har, samt den attraktive facon, der er så karakteristisk for de forskellige sortstyper.

De teknikker, der blev indført af de »bulgarske gartnere«, er inden for de sidste ca. 150 år blevet tilpasset, så de er egnede til de til enhver tid akutelle omstændigheder. De helt afgørende faktorer for dyrkning af peberfrugter er ved produktionen løbende blevet revurderet, og der er kommet nye produktionsmetoder. Op til 1960'erne mente man, at gode jordbundsforhold, kunstvandingspotentiale (floderne Tisza og Körös samt kunstvandingskanalsystemer), antallet af solskinstimer (potentiale for tidlig dyrkning) samt opvarmning tidlig om foråret var de vigtigste produktionsparametre. Den næste periode varede fra slutningen af 1960'erne til slutningen af 1980'erne. Peberproducenterne ville have fuldt udbytte af den tidlige opvarmning og de mange solskinstimer om vinteren og foråret og begyndte derfor at anvende drivhuse. Da man mellem 1960'erne og 1980'erne opdagede, at der er geotermisk energi i regionen, ændrede produktionen af »Szentesi paprika« sig fra frilandsdyrkning til dyrkning i drivhuse, hvor ikke-jordbaserede produktionsmetoder vandt frem.

Henvisning til offentliggørelsen af varespecifikationen

(artikel 5, stk. 7, i forordning ([3]) (EF) nr. 510/2006)

Vidékfejlesztési Értesítő (bulletin vedrørende landbrugsudviklingen), 16. november 2011, bind LXI, nr. 6, s. 317

http://elelmiszerlanc.kormany.hu/minosegpolitika

([3]) Se fodnote 2.

Offentliggørelse af en ansøgning i henhold til artikel 50, stk. 2, litra a), i Europa-Parlamentets og Rådets forordning (EU) nr. 1151/2012 om kvalitetsordninger for landbrugsprodukter og fødevarer

(2013/C 237/07)

Denne offentliggørelse giver ret til at gøre indsigelse mod ansøgningen om ændring, jf. artikel 51 i Europa-Parlamentets og Rådets forordning (EU) nr. 1151/2012 ([1]).

ANSØGNING OM ÆNDRING

RÅDETS FORORDNING (EF) Nr. 510/2006

om beskyttelse af geografiske betegnelser og oprindelsesbetegnelser for landbrugsprodukter og fødevarer ([2])

ANSØGNING OM ÆNDRING I HENHOLD TIL ARTIKEL 9

»TERRA D'OTRANTO«

EF-Nr.: IT-PDO-0117-1519-01.03.2011

BGB ( ) BOB (X)

1. **Afsnit i varespecifikationen, som berøres af ændringen**

— ☐ Produktets betegnelse

— ☒ Varebeskrivelse

— ☐ Geografisk område

— ☒ Bevis for oprindelse

— ☐ Produktionsmetode

— ☐ Tilknytning

— ☐ Mærkning

— ☒ Krav i nationale bestemmelser

— ☒ Andet (angives nærmere)

2. **Type af ændring**

— ☐ Ændring af enhedsdokument eller resuméark

— ☒ Ændring af varespecifikationen for en registreret BOB eller BGB, for hvilken hverken enhedsdokumentet eller resuméet er offentliggjort

— ☐ Ændring af en varespecifikation, hvor der ikke kræves ændring af det offentliggjorte enhedsdokument (artikel 9, stk. 3, i forordning (EF) nr. 510/2006)

— ☐ Midlertidig ændring af varespecifikationen, fordi de offentlige myndigheder har indført obligatoriske sundheds- eller plantesundhedsforanstaltninger (artikel 9, stk. 4, i forordning (EF) nr. 510/2006)

([1]) EUT L 343 af 14.12.2012, s. 1.
([2]) Erstattet af forordning (EU) nr. 1151/2012.

3. **Ændring(er)**

3.1. *Varebeskrivelse*

Varespecifikationen er blevet ændret ved at indføre medianer for de typiske deskriptorer, afskaffe 6,5-bedømmelsesordningen (ikke længere relevant) og indføre bestemmelserne i henhold til metode COI/T20 dok. nr. 22. Der er også tilføjet et par specifikationer til den organoleptiske analyse som følge af, at én af de to lokale sorter dominerer.

Anvendelse af den nye metode resulterer i følgende beskrivelse:

— Farve: grøn eller gul med svage grønne undertoner

— Duft: middel frugtagtig (medianen for egenskaben frugtagtig: mellem 3 og 6) smag af oliven med den rette grad af modenhed og med et anstrøg af blade

— Smag: middel frugtagtig (medianen for egenskaben frugtagtig: mellem 3 og 6) og med undertoner af oliven med den rette grad af modenhed. Moderate eller lette undertoner af krydret smag og bitterhed alt efter høsttidspunktet (medianen for krydret smag og bitterhed: over 0 og op til 6). Alt efter høsttidspunktet og den dominerende sort suppleres denne frugtagtige egenskab desuden af undertoner af olivenblade, nyklippet græs og kardon/artiskok/cikorie for Ogliarola eller frugt/tomat/bær for Cellina.

Der er foretaget nogle ændringer af de kemiske kriterier med en nedsættelse af det samlede maksimale syreindhold udtrykt som oliesyre (fra < 0,8 til det nuværende niveau på < 0,65) og en lille forhøjelse af linolensyreindholdet (fra ≤ 0,7 til ≤ 0,8) og K232-værdien (fra ≤ 2,1 til ≤ 2,2). Disse ændringer skyldes et ønske om at øge repræsentativiteten for de to mest udbredte sorter i regionen, Cellina di Nardò og Ogliarola Salentina, der er afgørende for de justerede linolensyre- og K232-værdier for de olier, som kun fremstilles af én sort. Tidligere var de ikke særlig repræsentative.

3.2. *Bevis på oprindelse*

Varespecifikationen er blevet tilpasset til at opfylde kravene i forordning (EF) nr. 1898/2006 ved at inkludere bestemmelserne om, at aktørerne skal kunne fremlægge bevis på oprindelsen.

3.3. *Krav i nationale bestemmelser*

Kravene ifølge lov nr. 169 af 15. februar 1992 om regler for godkendelse af registrerede oprindelsesbetegnelser for jomfruolivenolie og ekstra jomfruolivenolie og ifølge ministerielt dekret nr. 573/1993 er afskaffet.

3.4. *Andet*

Ændringerne er sket efter anmodning fra Consorzio di tutela (beskyttelsesorgan) for »Terra d'Otranto« ekstra jomfruolivenolie, der er godkendt til at fremsende anmodninger om ændringer. Consorzio di tutela blev etableret, efter at den oprindelige ansøgning om registrering af »Terra d'Otranto« som beskyttet oprindelsesbetegnelse var indgivet. Den blev på daværende tidspunkt indgivet af APROL (olivenavlernes sammenslutning) som repræsentant for syv forskellige sammenslutninger af olivenavlere.

ENHEDSDOKUMENT

RÅDETS FORORDNING (EF) Nr. 510/2006

om beskyttelse af geografiske betegnelser og oprindelsesbetegnelser for landbrugsprodukter og fødevarer ([3])

»TERRA D'OTRANTO«

EF-Nr.: IT-PDO-0117-1519-01.03.2011

BGB ( ) BOB (X)

1. **Navn**

»Terra d'Otranto«

2. **Medlemsstat eller tredjeland**

Italien

([3]) Se fodnote 2.

3. **Beskrivelse af landbrugsproduktet eller fødevaren**

3.1. *Produkttype*

Kategori 1.5 — Olier og fedtstoffer (smør, margarine, olier mm.)

3.2. *Beskrivelse af produktet med betegnelsen i punkt 1*

»Terra d'Otranto« er en ekstra jomfruolivenolie med følgende kemiske og organoleptiske egenskaber:

— Maksimalt syreindhold: 0,65 %

— Peroxider: ≤ 14 mEq O2/kg

— K232 ≤ 2,2

— K270 ≤ 0,17

— Linolensyre ≤ 0,8

— Farve: grøn eller gul med grønne undertoner

— Duft: middel frugtagtig (medianen for egenskaben frugtagtig: mellem 3 og 6) smag af oliven med den rette grad af modenhed og med et anstrøg af blade

— Smag: middel frugtagtig (medianen for egenskaben frugtagtig: mellem 3 og 6) og med undertoner af oliven med den rette grad af modenhed.

Moderate eller lette undertoner af krydret smag og bitterhed alt efter høsttidspunkt. Denne frugtagtige egenskab suppleres endvidere alt efter høsttidspunkt og dominerende sort af undertoner af olivenblade, nyklippet græs og kardon/artiskok/cikorie for Ogliarola eller frugt/tomat/bær for Cellina.

3.3. *Råvarer (kun for forarbejdede produkter)*

—

3.4. *Foder (kun for produkter af animalsk oprindelse)*

—

3.5. *Specifikke etaper af produktionen, som skal finde sted i det afgrænsede geografiske område*

Dyrkningen, produktionen og presningen af »Terra d'Otranto« ekstra jomfruolivenolie skal ske inden for det i punkt fastsatte 4 produktionsområde.

3.6. *Særlige regler vedrørende udskæring, rivning eller emballage osv.*

»Terra d'Otranto« ekstra jomfruolivenolie skal bringes i omsætning i beholdere af glas eller tin med et maksimalt rumindhold på fem liter. »Terra d'Otranto« ekstra jomfruolivenolie skal emballeres inden for det geografiske produktionsområde for at sikre, at produktets oprindelse kontrolleres, og undgå, at produktet transporteres i bulk uden for dette område, hvilket kan give ringere kvalitet og tab af specifikke egenskaber som beskrevet i punkt 3.2, navnlig oliens typiske egenskaber i form af noter af kardon/artiskok/cikorie. Oliens sammensætning, der er kendetegnet ved en betydelig grad af polyumættede fedtsyrer, gør, at den let mister organoleptisk kvalitet og særpræg, hvis den udsættes for luftens ilt, når den overføres, pumpes, transporteres og losses — hvilket er aktiviteter, der oftere finder sted, hvis emballeringen sker uden for produktionsområdet.

3.7. *Specifikke mærkningsregler*

Betegnelsen »Terra d'Otranto« skal fremgå af etiketten med tydelige bogstaver, som ikke kan fjernes, være klart adskilt fra enhver anden påskrift og skal lige bagved efterfølges af udtrykket »Denominazione di origine protetta« eller initialforkortelsen »DOP« (beskyttet oprindelsesbetegnelse/BOB) og det relevante EU-symbol.

Den virksomhed, der emballerer produktet, skal mærke al emballage, der anvendes til produkter, der bringes i omsætning, med et serienummer i overensstemmelse med den relevante kontrolplan.

Enhver anden beskrivelse, der ikke udtrykkeligt er tilladt, er forbudt, herunder følgende ord: *fine* (fin), *scelto* (valg), *selezionato* (udvalgt), *superiore* (udsøgt).

Anvendelse af navne, handelsnavne og private varemærker er dog tilladt, når blot de ikke indeholder nogen anprisninger eller kan vildlede forbrugerne.

Produktionsåret skal obligatorisk anføres på etiketten.

4. **Præcis afgrænsning af det geografiske område**

Produktionsområdet for "Terra d'Otranto" (BOB) omfatter hele provinsen Lecce og dele af provinserne Taranto og Brindisi. Området omfatter en bue mellem Det Ioniske Hav og Adriaterhavet, lige fra bakkedraget Taranto Murge og de fjerneste skråninger af det sydøstlige bakkedrag Brindisi Murge, via Lecce-plateauet og til sammenløbet af de to have på halvøen Serre Salentine.

5. **Forbindelse til det geografiske område**

5.1. *Det geografiske områdes egenart*

Produktets egenskaber kan tilskrives de særlige jordbundsforhold og klimatiske forhold: Områdets miljøfaktorer og specifikke sorter giver »Terra d'Otranto«-olie et karakteristisk særpræg. Jordbunden udmærker sig ved sin store ensartethed, der skyldes kalksten fra Kridt, hvorpå lag af kalksten fra Tertiær er aflejret med kalkholdige, sandede og lerholdige aflejringer fra Pliocæn og Pleistocæn og med brune eller røde jordlag, der ofte findes i skiftende lag oven på et underlag af kalksten. I orografisk henseende er området kendetegnet ved udstrakte sletter, der flankeres og brydes op af lave og bløde bakker. Området mangler floder og vandløb på overfladeniveau, men nyder godt af et stærkt underjordisk netværk af vandløb, der giver hele regionen et decideret karstagtigt udseende. På grund af sin kyst-karakter og den sydlige breddegrad, har området et mildt klima, der har tilbøjelighed til at være varmt.

5.2. *Produktets egenart*

Den traditionelle olivendyrkning i regionen er kendetegnet ved de dominerende lokale sorter Cellina di Nardò og Ogliarola Leccese, der giver den fremstillede olie den karakteristiske kvalitet. At disse to sorter skal udgøre mindst 60 %, er medbestemmende for oliens organoleptiske egenskaber, der går lige fra undertoner af kardon/artiskok/cikorie til tomat/bær — alt efter hvor stor en andel hver sort udgør.

5.3. *Årsagssammenhængen mellem det geografiske område og produktets kvalitet eller egenskaber (for BOB) eller produktets særlige egenskaber, omdømme eller andre kendetegn (for BGB)*

Olivenavl er den primære produktionssektor i området og spiller en grundlæggende rolle i lokaløkonomien. Selv i det 19. århundrede omfattede den geografiske betegnelse »Terra d'Otranto« de nuværende provinser Lecce, Brindisi og Taranto. Denne region har altid været kendetegnet ved, at oliven spiller en stor rolle, og at man kan udvinde en »kostbar væske« deraf. Oprindelsen til navnet »Terra d'Otranto« kædes sammen med regionens historie og med selve det at dyrke oliven. Fønikiske og græske landbrugere indførte olivenavl i området i oldgammel tid, og de basilianske munke, der slog sig ned dér i det 10. århundrede, skabte med deres indsats det første blomstrende marked for kostbare olier fra Terra d'Otranto. «Terra d'Otranto» henviser til det middelalderlige navn for regionen Salento, da Otranto i middelalderen var den vigtigste by i hele regionen.

Henvisning til offentliggørelsen af varespecifikationen

(Artikel 5, stk. 7, i forordning (EF) nr. 510/2006 ([4]))

De italienske myndigheder har indledt den nationale indsigelsesprocedure ved at offentliggøre forslaget om ændring af den beskyttede geografiske betegnelse »Terra d'Otranto« i *Gazzetta Ufficiale della Repubblica Italiana* (det italienske statstidende) nr. 297 af 21. december 2010. Den konsoliderede udgave af varespecifikationen kan ses på følgende websted:

http://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/3335

eller ved at gå direkte til hjemmesiden for ministeriet for landbrug, fødevarer og skovbrug, Ministero delle politiche agricole alimentari e forestali, (hhtp://www.politicheagricole.it), og klikke på »Qualità e sicurezza« (øverst i skærmens højre side) og herefter på »Disciplinari di produzione all'esame dell'UE«.

([4]) Se fodnote 2.

Offentliggørelse af en ansøgning i henhold til artikel 50, stk. 2, litra b), i Europa-Parlamentets og Rådets forordning (EU) nr. 1151/2012 om kvalitetsordninger for landbrugsprodukter og fødevarer

(2013/C 237/08)

Denne offentliggørelse giver ret til at gøre indsigelse mod ansøgningen, jf. artikel 51 i Europa-Parlamentets og Rådets forordning (EU) nr. 1151/2012 ([1]).

ANSØGNING OM REGISTRERING AF EN GTS

RÅDETS FORORDNING (EF) Nr. 509/2006

om garanterede traditionelle specialiteter i forbindelse med landbrugsprodukter og fødevarer ([2])

»ŽEMAITIŠKAS KASTINYS«

EF-Nr.: LT-TSG-0007-0910-11.11.2011

1. **Den ansøgende sammenslutnings navn og adresse**

Sammenslutningens eller organisationens navn (hvis det er relevant):	»Žemaitiško kastinio gamintojai«
Adresse:	Sedos g. 35 LT-87101 Telšiai LIETUVA/LITHUANIA
Tlf.	+370 44422201
Fax	+370 44474897
E-mail:	info@zpienas.lt

2. **Medlemsstat eller tredjeland**

Litauen

3. **Varespecifikation**

3.1. *Navn(e), der søges registreret (artikel 2 i forordning (EF) nr. 1216/2007)*

»Žemaitiškas kastinys«

3.2. *Navnets art*

☒ Navnet er specifikt i sig selv

☐ Navnet udtrykker landbrugsproduktets eller fødevarens specificitet

Navnet »Žemaitiškas kastinys« udtrykker ikke produktets specifikke karakter, men er et veletableret og velkendt navn i både Žemaitija (en region i det vestlige Litauen) og hele Litauen, når man traditionelt henviser til dette produkt, jf. de forskellige kilder, der er omtalt i punkt 3.8.

Navnet »Žemaitiškas kastinys« er nævnt i følgende kogebøger fra 1900-tallet: *Gaspadinystės knyga arba Pamokinimai kaip prigulinčiai yra sutaisomi valgiai* (Tilžė (Tilsit), 1927), *Ką valgome* (Dr Tumėnienė *et al.*, Kaunas, 1935) og *Lietuvių valgiai* (samlet af J. Pauliukonienė, Vilnius, 1983).

3.3. *Søges navnet forbeholdt det produkt, som ansøgningen vedrører, jf. artikel 13, stk. 2, i forordning (EF) nr. 509/2006?*

☒ Navnet søges forbeholdt det pågældende produkt

☐ Navnet søges ikke forbeholdt det pågældende produkt

3.4. *Produkttype (jf. bilag II)*

Kategori 1.4. Andre animalske produkter (æg, honning, forskellige mejeriprodukter undtagen smør, m.m.)

([1]) EUT L 343 af 14.12.2012, s. 1.
([2]) Erstattet af forordning (EU) nr. 1151/2012.

3.5. *Beskrivelse af det landbrugsprodukt eller den fødevare, som navnet i punkt 3.1. henviser til (artikel 3, stk. 1, i forordning (EF) nr. 1216/2007)*

»Žemaitiškas kastinys« er et traditionelt produkt, der fremstilles af syrnet fløde, som opvarmes, omrøres og derefter afkøles.

»Žemaitiškas kastinys« har en karakteristisk homogen, tyk, ensartet konsistens som stivnet fløde med enkelte væskedråber, kan være løs i konsistensen ved en temperatur på + 6 °C og smelter let i munden. Produktet er hele vejen igennem ensartet gulligt. Alt efter de urter og krydderier, der anvendes i opskriften, kan »Žemaitiškas kastinys« have et farveskær som følge af farven på de tilsatte ingredienser og kan indeholde små stykker af urter eller krydderier. Produktet har en mild, lidt sur mælkesyresmag med en svag smag af salt og et strejf af urter og krydderier.

De fysisk-kemiske egenskaber for »Žemaitiškas kastinys« er som følger:

— Fedtindhold, alt efter opskriften: 25-30 %

— Indhold af almindeligt salt: 1-1,5 %.

3.6. *Beskrivelse af produktionsmetoden for det landbrugsprodukt eller den fødevare, som navnet i punkt 3.1 henviser til (artikel 3, stk. 2, i forordning (EF) nr. 1216/2007)*

Råvarer:

— Syrnet fløde med et fedtindhold på 25-30 %: 80-83 kg/100 kg produkt

— Smør med et fedtindhold på mindst 82 %: 6-7 kg/100 kg produkt

— Surmælk med et fedtindhold på 2,5-4 %: 5-5,5 kg/100 kg produkt

— Almindeligt salt: 1-1,5 kg/100 kg produkt.

Der kan anvendes urter og krydderier (sort peber, allehånde, kommen, dild, mynte eller en blanding heraf: 0,1-0,15 kg/100 kg produkt) og aromatiske grøntsager (hvidløg eller løg: 1-2 kg/100 kg produkt).

Produktionsmetode:

»Žemaitiškas kastinys« fremstilles ved hjælp af en traditionel metode.

De fornødne ingredienser afvejes i henhold til opskriften. Den syrnede fløde og surmælken sammenblandes i en separat beholder og opvarmes til en temperatur på mellem 25 °C og 30 °C. Det kolde smør blødgøres ved at opvarme det til en temperatur på mellem 25 °C og 30 °C. De aromatiske grøntsager rengøres og snittes.

Som angivet i opskriften kommes det opvarmede, blødgjorte smør i røreskålen, og blandingen af syrnet fløde og surmælk tilsættes gradvist, idet der hver gang hældes en ottendedel af den samlede mængde ifølge opskriften i, og blandingen omrøres ved håndkraft eller ved hjælp af tilsvarende mekaniske midler. »Žemaitiškas kastinys« skal altid omrøres i samme retning. Når blandingen får konsistens som syrnet fløde (uden at kærnemælken skiller fra), tilsættes der endnu en ottendedel af blandingen af syrnet fløde og surmælk, og omrøringen genoptages. Dette gentages, indtil hele blandingen af syrnet fløde og surmælk er blevet tilsat (som angivet i opskriften). Når »Žemaitiškas kastinys« begynder at stivne, tilsættes der under jævn omrøring salt, formalede urter og krydderier samt finthakkede aromatiske grøntsager. »Žemaitiškas kastinys« skal emballeres øjeblikkeligt, inden produktet størkner.

»Žemaitiškas kastinys« emballeres i lerkrukker eller engangsbeholdere med hhv. 250 g, 200 g og 100 g. Krukkerne tillukkes med et låg af ler, og ovenpå anbringes der en beskyttelse, som bindes fast med en snor. Engangsbeholderne forsegles med folielåg. Efter emballering afkøles »Žemaitiškas kastinys« til en temperatur på 6 °C. Når produktet er afkølet, bliver det stift og homogent.

3.7. *Landbrugsproduktets eller fødevarens specificitet (artikel 3, stk. 3, i forordning (EF) nr. 1216/2007)*

Følgende specifikke egenskaber adskiller »Žemaitiškas kastinys« fra andre varer i samme kategori:

— Traditionelle ingredienser og traditionel produktionsmetode: I modsætning til andre typer *kastinys* er opskriften på »Žemaitiškas kastinys« knap nok blevet ændret, siden den første gang blev nævnt i de skriftlige kilder, der er omtalt i punkt 3.8, dvs. der anvendes de samme ingredienser i omtrent det samme forhold. For at opnå flere forskellige smagsvarianter erstattede man imidlertid i andre typer *kastinys*, som man begyndte at producere senere, fuldstændig den syrnede fløde med surmælk eller blandede den syrnede fløde med kefir, og man tilsatte eventuelt rødbede- eller gulerodssaft eller

æggeblommer, der gør *kastinys*-produktet rødt eller gult. Produktionen af »Žemaitiškas kastinys« er kendetegnet ved konstant langsom omrøring af blandingen af smør og syrnet fløde, imens der tilsættes en ottendedel af blandingen af syrnet fløde og surmælk ad gangen, samtidig med at temperaturen reguleres meget nøje (25-30 °C) for at sikre, at kærnemælken ikke skiller fra. Produktionen af de andre typer *kastinys* er blevet moderniseret. De omrøres ikke, men piskes, idet man tilsætter alle ingredienserne ad tre eller fire omgange eller endda på én gang, og kan være udsat for store temperatursvingninger.

— Smag: »Žemaitiškas kastinys« har en karakteristisk mild, let sur mælkesyresmag med en svag smag af salt og et strejf af de tilsatte urter og krydderier. Andre typer *kastinys* er kendetegnet ved en temmelig skarp mælkesyresmag (hvis den syrnede fløde er blevet erstattet med surmælk) eller en gæragtig mælkesyresmag (hvis den syrnede fløde er blevet erstattet med kefir) og med et strejf af den smag, der er karakteristisk for den tilsatte saft (rødbede eller gulerod) eller æggeblomme.

— Konsistens: »Žemaitiškas kastinys« har en karakteristisk tyk, homogen, ensartet konsistens som stivnet fløde med enkelte væskedråber, kan være løs i konsistensen ved en temperatur på + 6 °C og smelter let i munden. Andre typer *kastinys* er kendetegnet ved en blød, smørbar konsistens.

3.8. *Landbrugsproduktets eller fødevarens traditionelle karakter (artikel 3, stk. 4, i forordning (EF) nr. 1216/2007)*

Ud over den primitive metode med at producere smør ved at bruge en ske til at piske syrnet fløde i en skål, hvilket var en metode, der var udbredt overalt i Litauen, udviklede man i den litauiske region Žemaitija sin egen karakteristiske teknik med at forarbejde syrnet fløde ved at omrøre opvarmet syrnet fløde og sørge for, at kærnemælken ikke skiller fra. Denne teknik bredte sig til hele Litauen. Det produkt, man fik ud af metoden, »Žemaitiškas kastinys«, har en specifik smag og konsistens (*Lietuvių kalbos atlasas*, bd. 1, *Leksika*, Vilnius, 1977). I midten af 1800-tallet blev produktet beskrevet i akademiske publikationer (*Litwa pod wzgledem starozytnych zabytkow, obyczajow i zwyczajow skreslona* (Ludwik Adam Jucewicz (Ludwik z Pokiewia), Vilnius, 1846) og *Pamiętniki Pana Kamertona* (Leon Potocki, Poznań, 1869)), hvor produktionsmetoden (fremstillet af opvarmet syrnet fløde) og den særdeles behagelige smag fremhæves.

Litauens Nationalmuseum har udskrifter af beretninger fra folk, der blev født i slutningen af 1800-tallet og begyndelsen af 1900-tallet (Litauens Nationalmuseum, de etnografiske samlinger, opbevaringsmagasin F 15-4, F 15-13, F 32-7 og F 32-48), hvor produktionsteknikken og opskriften beskrives som følger: Først kommes tre spiseskefulde syrnet fløde og en halv skefuld smør i en opvarmet lerskål. Dette blandes grundigt og omrøres med en træske, altid i samme retning. Når den omrørte masse begynder at blive kold, og kærnemælken skiller fra, opvarmes skålen i varmt vand, og den flydendegjorte masse afkøles i en skål med koldt vand. Syrnet fløde tilsættes til massen under omrøring og i små mængder. En del af den syrnede fløde erstattes ofte med surmælk, hvilket gør *kastinys*-produktet lettere. Når tiden er inde til at standse omrøringen, tilsættes der salt samt urter og krydderier (kommen, stødt peber, finthakket hvidløg og løg, den grønne del af forårsløg, hvis det er sæson, og duske af dild eller mynte).

I *Lietuvių valgiai* (samlet af J. Pauliukonienė, Mokslas, Vilnius, 1983), der er en bog, som er udarbejdet af forskere i 1983, og som beskriver de gamle traditionelle teknikker til fremstilling af råvarerne, og hvor den syrnede fløde skilles fra mælken ved håndkraft (ved at skumme fløden af med en ske), hvilket helt naturligt efterlader noget surmælk i den syrnede fløde, er opskriften og produktionsmetoden for »Žemaitiškas kastinys« som følger: »Žemaitiškas kastinys«: ½ l syrnet fløde, 1 skefuld smør, ½ teskefuld kommen eller andre urter eller krydderier, salt. Smørret kommes i en lerskål sammen med en skefuld syrnet fløde, skålen kommes i varmt vand, og blandingen omrøres med en træske. Efter let omrøring af blandingen (inden kærnemælken skiller fra) tilsættes der endnu en skefuld syrnet fløde, og omrøringen fortsætter, indtil al den syrnede fløde er blevet tilsat. Når blandingen begynder at blive tykkere, tilsættes der salt sammen med vasket og tørret kommen, idet det hele blandes grundigt. *Kastinys* har en noget salt, mild og lidt sur smag.

Opskriften og produktionsmetoden for »Žemaitiškas kastinys« har ikke ændret sig frem til i dag, sådan som det fremgår af det certifikat, produktet fik i 2010 af fonden for den litauiske kulinariske arv, hvor det blev bekræftet, at »Žemaitiškas kastinys« fremstilles i overensstemmelse med de traditionelle teknikker ved hjælp af traditionelle råvarer og ingredienser samt traditionelt udstyr.

3.9. *Minimumskravene og procedurerne for verifikation af specificiteten (artikel 4 i forordning (EF) nr. 1216/2007)*

Under hensyntagen til de specifikke egenskaber for »Žemaitiškas kastinys« foretages der følgende kontrolaktiviteter:

1) Kvaliteten af hvert parti modtagne råvarer:

— Fedtindholdet i den syrnede fløde og surmælken skal være som angivet i punkt 3.6; dette testes i et laboratorium

— Fedtindholdet i smørret skal være som angivet i punkt 3.6; dette testes i et laboratorium

— De organoleptiske indikatorer for urterne, krydderierne og de aromatiske grøntsager (aroma, smag, farve) kontrolleres på baggrund af dokumentation og via en sensorisk vurdering

2) Overholdelse af den i 3.6 fastsatte produktionsteknik: Det kontrolleres visuelt og ved at tage målinger, om rækken af processer og de fastlagte parametre (temperatur og forholdet mellem ingredienserne) overholdes under produktionen af hvert parti

3) Kvaliteten af hvert parti af slutproduktet:

— De organoleptiske egenskaber (konsistens, farve, smag) skal svare til parametrene i punkt 3.5; dette kontrolleres ved sensorisk analyse

— Fedtindholdet skal være som angivet i punkt 3.5; dette testes i et laboratorium

— Indholdet af almindeligt salt skal være som angivet i punkt 3.5; dette kontrolleres på baggrund af opskriften og i tvivlstilfælde i et laboratorium.

Mindst én gang om året kontrollerer den i punkt 4.1 angivne myndighed, at produktet og fremstillingsmetoden overholder varespecifikationen.

4. **Myndigheder eller organer, der kontrollerer overholdelsen af varespecifikationen**

4.1. *Navn og adresse*

Navn: Valstybinė maisto ir veterinarijos tarnyba

Adresse: Siesikų g. 19
LT-07170 Vilnius
LIETUVA/LITHUANIA

Tlf. +370 52404361
E-mail: vvt@vet.lt

☒ Offentlig ☐ Privat

4.2. *Myndighedens/organets særlige opgaver*

Den i punkt 4.1 nævnte kontrolmyndighed er ansvarlig for at kontrollere alle de kriterier, som fremgår af specifikationen.

EUR-Lex (http://new.eur-lex.europa.eu) giver direkte og gratis adgang til EU-retten. Via dette netsted kan man konsultere *Den Europæiske Unions Tidende*, og netstedet indeholder endvidere traktaterne, retsforskrifter, retspraksis og forberedende retsakter.

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