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[1] Text with EEA relevance.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates [1]

22 May 2019

(2019/C 177/01)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,1171	CAD	Canadian dollar	1,4952
JPY	Japanese yen	123,27	HKD	Hong Kong dollar	8,7692
DKK	Danish krone	7,4680	NZD	New Zealand dollar	1,7173
GBP	Pound sterling	0,88280	SGD	Singapore dollar	1,5399
SEK	Swedish krona	10,7600	KRW	South Korean won	1 329,30
CHF	Swiss franc	1,1252	ZAR	South African rand	16,0504
ISK	Iceland króna	138,50	CNY	Chinese yuan renminbi	7,7108
NOK	Norwegian krone	9,7598	HRK	Croatian kuna	7,4260
BGN	Bulgarian lev	1,9558	IDR	Indonesian rupiah	16 225,88
CZK	Czech koruna	25,793	MYR	Malaysian ringgit	4,6756
HUF	Hungarian forint	326,54	PHP	Philippine peso	58,610
PLN	Polish zloty	4,3038	RUB	Russian rouble	71,7625
RON	Romanian leu	4,7625	THB	Thai baht	35,686
TRY	Turkish lira	6,8110	BRL	Brazilian real	4,5163
AUD	Australian dollar	1,6221	MXN	Mexican peso	21,2345
			INR	Indian rupee	77,8600

[1] *Source*: reference exchange rate published by the ECB.

COMMISSION IMPLEMENTING DECISION

of 14 May 2019

on the publication in the *Official Journal of the European Union* of the application for approval of an amendment, which is not minor, to a product specification referred to in Article 53 of Regulation (EU) No 1151/2012 of the European Parliament and of the Council for the name 'Banon' (PDO)

(2019/C 177/02)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ([1]), and in particular Article 50(2)(a) in conjunction with Article 53(2) thereof,

Whereas:

(1) France has sent an application for approval of an amendment, which is not minor, to the product specification of 'Banon' (PDO) in accordance with Article 49(4) of Regulation (EU) No 1151/2012.

(2) In accordance with Article 50 of Regulation (EU) No 1151/2012 the Commission has examined that application and concluded that it fulfils the conditions laid down in that Regulation.

(3) In order to allow for the submission of notices of opposition in accordance with Article 51 of Regulation (EU) No 1151/2012, the application for approval of an amendment, which is not minor, to the product specification, as referred to in the first subparagraph of Article 10(1) of Commission Implementing Regulation (EU) No 668/2014 ([2]), including the amended single document and the reference to the publication of the relevant product specification, for the registered name 'Banon' (PDO) should be published in the *Official Journal of the European Union*,

HAS DECIDED AS FOLLOWS:

Sole Article

The application for approval of an amendment, which is not minor, to the product specification, referred to in the first subparagraph of Article 10(1) of Commission Implementing Regulation (EU) No 668/2014, including the amended single document and the reference to the publication of the relevant product specification, for the registered name 'Banon' (PDO) is contained in the Annex to this Decision.

In accordance with Article 51 of Regulation (EU) No 1151/2012, the publication of this Decision shall confer the right to oppose to the amendment referred to in the first paragraph of this Article within three months from the date of publication of this Decision in the *Official Journal of the European Union*.

Done at Brussels, 14 May 2019.

For the Commission

Phil HOGAN

Member of the Commission

([1]) OJ L 343, 14.12.2012, p. 1.

([2]) Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

ANNEX

APPLICATION FOR EAPPROVAL OF NON-MINOR AMENDMENTS TO THE PRODUCT SPECIFICATION FOR A PROTECTED DESIGNATION OF ORIGIN OR PROTECTED GEOGRAPHICAL INDICATION

Application for approval of amendments in accordance with the first subparagraph of Article 53(2) of Regulation (EU) No 1151/2012

'Banon'

EU No: PDO-FR-0290-AM02 – 10.1.2018

PDO (X) PGI ( )

1. **Applicant group and legitimate interest**

Name: Syndicat Interprofessionnel de Défense et de Promotion du Banon

Address:

570, Avenue de la libération
04100 Manosque
FRANCE

Tel. +33 492874755
Fax +33 492727313
Email: v.enjalbert@mre-paca.fr

The group is made up of milk producers, processors and ripeners and therefore has a legitimate right to request amendments to the product specification.

2. **Member State or Third Country**

France

3. **Heading in the product specification affected by the amendment(s)**

— ☒ Product name

— ☒ Description of product

— ☒ Geographical area

— ☒ Proof of origin

— ☒ Method of production

— ☒ Link

— ☒ Labelling

— ☒ Other: updating of the contact details of the inspection body and of the applicant group, national requirements.

4. **Type of amendment(s)**

— ☒ Amendments to the product specification of a registered PDO or PGI not to be qualified as minor in accordance with the third subparagraph of Article 53(2) of Regulation (EU) No 1151/2012

— ☐ Amendments to the product specification of a registered PDO or PGI for which a Single Document (or equivalent) has not been published and which cannot be qualified as minor within the meaning of the third subparagraph of Article 53(2) of Regulation (EU) No 1151/2012

5. **Amendment(s)**

5.1. *Product name*

Under the 'Product name' heading, the following provision:

'The Protected Designation of Origin defined in this specification is: "Banon".'

has been replaced by:

'Banon'

The following paragraph has been deleted:

'The name of "Banon" cheese comes from the name of the municipality of Banon, located in the department of Alpes-de-Haute-Provence, a place of fairs and trading since the Middle Ages.'

The name of the PDO is considered to be sufficient in this section of the specification.

5.2. *Description of product*

The provision 'The rind is a creamy-yellow colour under the leaves' is replaced by 'The rind is a creamy-yellow or golden-brown colour under the leaves'.

As regards the colour of the rind under the leaves, 'creamy-yellow' is supplemented by 'or golden-brown' to better characterise the product.

The following paragraph has been added:

'It is a cheese characterised by animal - mainly goat-like - notes, often accompanied by ammoniac and under-growth aromas, with a slight final bitterness. It has a velvety texture that melts in the mouth.'.

These clarifications stem from the work of the committee in charge of organoleptic examination of the product.

These changes have also been made to the Single Document.

5.3. *Geographical area*

Under the heading 'Definition of the geographical area', the list of municipalities in the geographical area has been updated following changes in the names of certain municipalities in the geographical area. The perimeter has not been changed.

5.4. *Proof of origin*

The obligation to keep a register of the quantities of milk purchased has been abolished for 'farming' operators, because national legislation does not allow them to buy milk. The obligation remains in force for 'non-farming' operators.

5.5. *Method of production*

— breed of the goats:

The following paragraph has been deleted:

'Until 31 December 2013, dairy goats of the breeds Commune Provençale, Rove and Alpine and from crosses of those breeds must make up at least 60 % of each herd.'

The following paragraph:

'From 1 January 2014 onwards, the milk used to make "Banon" must come exclusively from goats of the breeds Commune Provençale, Rove and Alpine and their crossbreeds.'

has been replaced by the following:

'The milk used to make "Banon" must come exclusively from goats of the breeds Commune Provençale, Rove and Alpine and their crossbreeds.'

The deadlines in the specification have been deleted because they have passed.

Those provisions have also been removed from the summary.

— minimum period of grazing and minimum period during which the goats must obtain their rough feed by grazing:

The following paragraph:

'The goats must graze regularly on the rough grazing and pastures in the area for at least 210 days per year.'

has been replaced by the following:

‘The goats must graze regularly on the rough grazing and pastures in the geographical area for at least 210 days per year.’

The words ‘geographical area’ are more precise than ‘area’ and facilitate inspections.

This amendment has also been made to the Single Document.

The provisions

‘For at least four months a year, they must obtain most of their rough feed by grazing.’

and

‘The goats must graze regularly on the rough grazing and pastures in the geographical area for at least 210 days per year.’

have therefore been removed once.

The minimum period of grazing and the minimum period during which the goats must obtain their rough feed by grazing, referred to twice in the specification, have been removed in order to avoid repetition.

These amendments have also been made to the Single Document.

— restriction on the supply of feed in troughs:

The sentence:

‘The supply of feed in troughs is limited on an annual and daily basis.’

has been deleted, as this sentence adds nothing to the maximum limit values already set out in the specification.

This amendment has also been made to the Single Document.

— supplementary ration:

The words ‘or cereal by-products’ have been added in order not to exclude compound feedingstuffs whose label specifies that they contain cereals and cereal by-products.

This amendment has also been made to the Single Document.

— restriction on purchases of fodder from outside the geographical area:

The sentence ‘Purchases of fodder from outside the area are similarly restricted.’ has been deleted because, having no target value, it does not provide any specific limitation. Besides, the restriction on purchases of fodder from outside the geographical area has been laid down as follows in the current specification:

‘The use of fodder and dehydrated lucerne from outside the geographical area has been limited to 250 kg of raw material a year for each adult goat present.’

This provision has also been removed from the Single Document.

— daily distribution method for dehydrated lucerne:

The following provision:

‘The use of dehydrated lucerne is limited to 400 g of raw material a day for each adult goat present, provided in at least two portions, and to 60 kg of raw material a year for each adult goat present.’

has been replaced by:

'The use of dehydrated lucerne is limited to 400 g of raw material a day for each adult goat present and to 60 kg of raw material a year for each adult goat present.'

The obligation to distribute dehydrated lucerne in two portions has been deleted, as the small quantities distributed do not justify this precaution (introduced because the ingestion of too much nitrogen can cause a serious metabolic disease, alkalosis).

This amendment has also been made to the Single Document.

— Prohibited types of feed:

The paragraph:

'Silage and wrapped fodder, cruciferous and other plants and seeds that might give the milk a bad taste are prohibited.'

has been replaced by:

'Silage and wrapped fodder and cruciferous fodder are prohibited.'

Since the target value 'and other plants and seeds that might give the milk a bad taste' is not precise enough to be easily checked, it has been removed.

This amendment has also been made to the Single Document.

— introduction of the ban on GMOs:

The following paragraph has been added:

'Only plants, by-products and supplementary feed derived from non-transgenic products are authorised in the animal feed. Transgenic crops are prohibited in all areas of farms producing milk intended for processing into the "Banon" PDO. This prohibition applies to all types of plant likely to be given as feed to dairy animals on the farm and to all crops liable to contaminate such plants.'

This provision makes it possible to preserve the traditional character of the feed and traditional methods of animal feeding.

This provision has also been added to the Single Document.

— origin of the feed:

The following paragraph has been added to the Single Document: 'As regards the origin of the feed, the production of concentrates is difficult and that of fodder limited owing to the natural factors of the geographical area. As the the origin of the concentrates is not specified, they may come from outside the geographical area. The basic ration comes mainly from the geographical area, but hay from outside the area may be distributed to the goats. The fact that the amount of concentrates and the amount of hay that may come from outside the geographical area is limited means that most of the feed is obtained from the geographical area. The following amounts per goat and per year may come from outside the geographical area:

— 250 kg of raw fodder and dehydrated lucerne, or about 213 kg of dry matter (190 kg of fodder containing an average of 84 % of dry matter corresponds to 160 kg of dry matter, and 60 kg of dehydrated lucerne containing an average of 89 % of dry matter corresponds to 53 kg of dry matter),

— 250 kg of dry concentrate (equivalent to 270 kg of raw material) from outside the geographical area per goat and per year.

Taking into account the goat's average annual intake of 1 100 kg, the share of feed from the geographical area accounts for at least 58 % of the total (in dry matter).'

This addition to the Single Document serves to demonstrate that most of the feed of the goats comes from the geographical area. The feed cannot be obtained entirely from the area owing to the natural factors described under 'Link with the geographical area'.

— temperature and time limit for renneting:

The paragraph:

'All physical or chemical processing is prohibited, apart from filtering in order to eliminate macroscopic impurities, cooling to an above-zero temperature for preservation purposes and heating of the milk to a maximum of 35 °C before renneting.'

has been replaced by the following:

'All physical or chemical processing is prohibited, apart from filtering in order to eliminate macroscopic impurities, cooling to an above-zero temperature for preservation purposes and heating of the milk before renneting.'

As the temperature range for renneting has been strictly defined in the specification registered in accordance with Regulation (EU) No 1211/2013 of 28 November 2013 (between 29 °C and 35 °C), and the milk used is raw goat's milk, the intermediate concept of heating temperature has been deleted because it is unnecessary: it refers to the heating of the milk for the renneting phase (temperature already defined).

The provision:

'In the case of dairy-based production, renneting is carried out no more than 4 hours after the milk collected is last drawn.'

has been replaced by

'In the case of dairy-based production, renneting is carried out no later than 18 hours after the milk has arrived at the cheese dairy and before 12 noon on the day after the milk collected is last drawn.'

The time limit for renneting in dairy-based production has been modified to allow enterprises to adapt their organisation to the duration of milk collection and to the smallest volume of milk used each time for renneting. The current collection scheme involves the collection of night milk. The last milking is collected around 2.30 am and renneted in its entirety in a large basin (1 000 litres) starting at 6.30 am. However, as there are a smaller number of breeders and the volumes are low, night work should be limited and the renneting of milk should be allowed as from 8.00 am on a small scale (80-litre vats). This may extend the operation until 12 noon.

— moulding phase

The paragraph:

'Moulding takes place directly once the whey has been drained. The cheeses are moulded into cheese-sieves by hand. Use of a distributor and multi-moulds is permitted. All forms of mechanical moulding are prohibited.'

has been replaced by:

'Moulding takes place directly once the whey has been drained. The cheeses are moulded into cheese-sieves by hand. Use of a distributor and multi-moulds is authorised, with mechanical assistance during moulding (lift for basins, conveyor belt). All forms of fully mechanical moulding are prohibited; human intervention is required for the distribution of the curd into multi-moulds.'

In order to allow the operators to adapt to the new techniques, it has been specified that mechanical assistance is authorised during the moulding phase (lift for basins, conveyor belt), but human intervention is required for the distribution of the curd in the moulds: all forms of fully mechanical moulding are prohibited.

— draining and mould release phase

The paragraph:

'Draining is carried out at a temperature of at least 20 °C. The cheese is removed from the mould between 24 and 48 hours after moulding.'

has been replaced by:

'Draining is carried out at a temperature of at least 20 °C and must last for 18 to 48 hours at the most after moulding. The cheese is not removed from the mould until the end of this phase. The cheeses are then dried at a minimum temperature of 13 °C for at least 24 hours.'

In accordance with the know-how, the duration of each step (between 18 and 48 hours for the draining, at least 24 hours for the drying) and the drying temperature (at least 13 °C) have been added in order to provide a framework for the operators' practices.

— salting time

The salting time has been removed to allow operators to adapt it to the concentration of brine used and still obtain the same result.

— maturation phase

The paragraph:

'The maturation, which lasts at least 15 days after renneting, takes place in the geographical area and is carried out in two stages:

— Before wrapping, the cheese is matured for 5 to 10 days after renneting at a temperature of at least 8 °C. At the end of this stage, it must have a homogeneous cover with well-established surface flora, a thin creamy-white rind and a thoroughly supple paste.

— The cheese is then wrapped in leaves and matured for at least 10 days at a temperature of 8 °C to 14 °C. The humidity level must be above 80 %.'

has been replaced by:

'The maturation, which lasts at least 15 days after renneting, is carried out in two stages:

— Before wrapping, the cheese is matured for 5 to 10 days after renneting at a temperature of at least 8 °C. At the end of this stage, it must have a homogeneous cover with well-established surface flora.

— The cheese is then wrapped in leaves and matured for at least 10 days at a temperature of 8 °C to 14 °C. At the end of this stage, it must have a thin creamy-white or golden-brown rind. The humidity level must be above 80 %.'

The reference to the geographical area has been deleted, because it is unnecessary in this part of the specification. The description of the rind has been moved and placed after the description of the parameters of the maturation phase and made consistent with the description of the product. The description of the paste has been deleted, because that criterion, which requires cutting the cheese, is not checked at this stage.

The paragraph:

'The cheeses may be soaked in eau-de-vie made from wine or from grape marc before being wrapped in leaves.'

has been replaced by:

'The cheeses may be soaked in eau-de-vie made from wine or from grape marc or sprayed with eau-de-vie made from wine or from grape marc before being wrapped in leaves.'

In addition to the practice of soaking the cheeses in eau-de-vie made from wine or from grape marc, that of spraying them with eau-de-vie made from wine or from grape marc has been added, as both methods give comparable results.

5.6. *Link*

The heading 'Elements justifying the link with the geographical area' has been entirely rewritten in order to demonstrate more explicitly the link between 'Banon' and its geographical area, without altering the substance of the link itself or removing any elements. Demonstrating this highlights, in particular, the link between the geographical environment, which is Mediterranean and suited to goat breeding and pastoralism, and the specific production and maturation know-how required to produce 'Banon'.

The first part describes the 'Specificity of the geographical area' and sets out the natural factors of the geographical area as well as the human factors, highlighting the specific know-how required for breeding the goats and producing the cheeses.

The second part describes the 'Specificity of the product', in particular certain elements introduced in the product description.

Finally, the last part explains the 'Causal link', i.e. the interaction between the natural and human factors and the product.

The entire link in the specification of the PDO can be found under point 5 of the Single Document.

5.7. *Labelling*

Under the heading 'Specific labelling details', the term 'designation' relating to the cheeses has been removed, as the heading and, more generally, the specification only concern cheeses with the designation of origin; the term is therefore unnecessary.

This amendment has also been made to the Single Document.

5.8. *Other amendments*

Under the heading 'Applicant group': the contact details of the group have been amended.

Under the heading 'References to inspection bodies', the name and contact details of the official bodies have been updated. In that section are provided the contact details of the authorities responsible for national inspections, i.e.: the National Institute of Origin and Quality (INAO) and the Directorate-General for Competition, Consumer Affairs and Fraud Prevention (DGCCRF). It has been added that the name and contact details of the certification body can be consulted via the website of the INAO and the European Commission's database.

The table with the main points to be checked has been updated to take account of an amendment (removal of the maximum heating temperature), and a main point to be checked concerning the nature of the milk (raw and whole milk, non-standardised in terms of protein and fat) has been added, in accordance with the current specification.

SINGLE DOCUMENT

'Banon'

EU No: PDO-FR-0290-AM02 – 10.1.2018

PDO (X) PGI ( )

1. **Name(s)**

'Banon'

2. **Member State or Third Country**

France

3. **Description of the agricultural product or foodstuff**

3.1. *Type of product*

Class 1.3. Cheeses

3.2. *Description of product to which the name in 1 applies*

'Banon' is a soft cheese made from raw, whole goat's milk. It is produced by rapid curdling (using rennet). The matured cheese is entirely wrapped in natural brown chestnut leaves and tied up with six to twelve strands of natural raffia forming a radial pattern.

After maturing for a minimum of 15 days, including 10 days in its leaf wrapping, 'Banon' is smooth, creamy, velvety and soft. The rind is a creamy-yellow or golden-brown colour under the leaves. It is a cheese characterised by animal - mainly goat-like - notes, often accompanied by ammoniac and undergrowth aromas, with a slight final bitterness. It has a velvety texture that melts in the mouth. With the leaves, the cheese is 75 to 85 mm in diameter and 20 to 30 mm in height. The net weight without leaves after the maturation period is 90 to 110 grams.

The cheese contains a minimum of 40 grams of dry matter per 100 grams of cheese and 40 grams of fat per 100 grams of cheese when completely dry.

3.3. *Feed (for products of animal origin only) and raw materials (for processed products only)*

The basic feed ration of the goats comes mostly from the geographical area. It is obtained exclusively by grazing and/or rough grazing and from dry feed made from legumes and/or grasses and/or spontaneous flora preserved in good conditions.

As soon as the weather and vegetation permit, the goats must be put out to graze and/or rough graze. They must graze regularly on the rough grazing and pastures in the area for at least 210 days per year.

They graze:

— on pastures composed of spontaneous annual or perennial, arboreal, shrubby or herbaceous species,

— on permanent pasture of native flora,

— on temporary pasture of grass or legumes or a mix of these.

For at least four months a year, they must obtain most of their rough feed by grazing.

During the period when the roughage ration must come mainly from grazing, the share of hay must not exceed 1,25 kg of raw material a day for each adult goat present.

The annual share of hay is limited to 600 kg of raw material for each adult goat present.

Green fodder provided in troughs is not authorised for more than 30 non-consecutive days per year.

The use of supplements is limited to 800 g of raw material a day for each adult goat present and to 270 kg of raw material a year for each adult goat present.

At least 60 % of the annual supplementary ration must be composed of cereals or cereal by-products. The use of dehydrated lucerne is limited to 400 g of raw material a day for each adult goat present and to 60 kg of raw material a year for each adult goat present.

The use of fodder and dehydrated lucerne from outside the geographical area has been limited to 250 kg of raw material a year for each adult goat present.

Silage and wrapped fodder and cruciferous fodder are prohibited.

Only plants, by-products and supplementary feed derived from non-transgenic products are authorised in the animal feed. Transgenic crops are prohibited in all areas of farms producing milk intended for processing into the 'Banon' PDO. This prohibition applies to all types of plant likely to be given as feed to dairy animals on the farm and to all crops liable to contaminate such plants.

On the farm, the forage area actually intended for the goat herd must be equal to at least 1 ha of natural and/or artificial grassland for every 8 goats and 1 ha of rough grazing for every 2 goats.

As regards the origin of the feed, the production of concentrates is difficult and that of fodder limited owing to the natural factors of the geographical area. As the origin of the concentrates is not specified, they may come from outside the geographical area. The basic ration comes mainly from the geographical area, but hay from outside the area may be distributed to the goats.

The fact that the amount of concentrates and the amount of hay that may come from outside the geographical area is limited means that most of the feed is obtained from the geographical area.

The following amounts per goat and per year may come from outside the geographical area:

— 250 kg of raw fodder and dehydrated lucerne, or about 213 kg of dry matter (190 kg of fodder containing an average of 84 % of dry matter corresponds to 160 kg of dry matter, and 60 kg of dehydrated lucerne containing an average of 89 % of dry matter corresponds to 53 kg of dry matter),

— 250 kg of dry concentrate (equivalent to 270 kg of raw material) from outside the geographical area per goat and per year.

Taking into account the goat's average annual intake of 1 100 kg, the share of feed from the geographical area accounts for at least 58 % of the total (in dry matter).

3.4. *Specific steps in production that must take place in the defined geographical area*

The milk must be produced and the cheese made and matured in the geographical area defined in point 4.

3.5. *Specific rules concerning slicing, grating, packaging, etc. of the product the registered name refers to*

—

3.6. *Specific rules concerning labelling of the product the registered name refers to*

Each cheese must be marketed with an individual label showing the designation of origin in characters at least as large as any other characters on the label.

The EU PDO symbol must be included in the labelling of cheeses with the protected designation of origin 'Banon'.

The name 'Banon' must appear on invoices and commercial documents.

4. **Concise definition of the geographical area**

The geographical area is composed of the following municipalities:

Department of Alpes-de-Haute-Provence (04)

Municipalities fully included in the area: Aiglun, Allemagne-en-Provence, Archail, Aubenas-les-Alpes, Aubignosc, Banon, Barras, Beaujeu, Bevons, Beynes, Bras-d'Asse, Brunet, Céreste, Champtercier, Châteaufort, Châteauneuf-Miravail, Châteauneuf-Val-Saint-Donat, Châteauredon, Clamensane, Cruis, Curel, Dauphin, Digne-les-Bains, Draix, Entrepierres, Entrevennes, Esparron-de-Verdon, Estoublon, Fontienne, Forcalquier, Hautes-Duyes, La Javie, La Motte-du-Caire, Lardiers, La Rochegiron, Le Brusquet, Le Castellard-Mélan, Le Castellet, Le Chauffaut-Saint-Jurson, L'Escale, Les Omergues, L'Hospitalet, Limans, Malijai, Mallefougasse-Augès, Mallemoisson, Mane, Marcoux, Mézel, Mirabeau, Montagnac-Montpezat, Montfuron, Montjustin, Montlaux, Montsalier, Moustiers-Sainte-Marie, Nibles, Niozelles, Noyers-sur-Jabron, Ongles, Oppedette, Peipin, Pierrerue, Pierrevert, Puimichel, Puimoisson, Quinson, Redortiers, Reillanne, Revest-des-Brousses, Revest-du-Bion, Revest-Saint-Martin, Riez, Roumoules, Sainte-Croix-à-Lauze, Sainte-Croix-du-Verdon, Saint-Étienne-les-Orgues, Saint-Jeannet, Saint-Julien-d'Asse, Saint-Jurs, Saint-Laurent-du-Verdon, Saint-Maime, Saint-Martin-de-Brômes, Saint-Martin-les-Eaux, Saint-Michel-l'Observatoire, Saint-Vincent-sur-Jabron, Salignac, Saumane, Sigonce, Simiane-la-Rotonde, Sisteron, Sourribes, Thoard, Vachères, Valbelle, Valernes, Villemus, Volonne.

Municipalities partly included in the area: Château-Arnoux-Saint-Auban, Ganagobie, Gréoux-les-Bains, La Brillanne, Les Mées, Lurs, Manosque, Montfort, Oraison, Peyruis, Valensole, Villeneuve, Volx.

For these municipalities, the boundary of the geographical area is marked on the maps lodged with the town hall of the municipalities concerned.

Department of Haute-Alpes (05)

Barret-sur-Méouge, Bruis, Chanousse, Val Buëch-Méouge (for the territory of the former municipality of Châteauneuf-de-Chabre), Éourres, Étoile-Saint-Cyrice, Garde-Colombe, La Piarre, Laragne-Montéglin, Le Bersac, L'Épine, Méreuil, Montclus, Montjay, Montmorin, Montrond, Moydans, Nossage-et-Bénévent, Orpierre, Ribeyret, Rosans, Saint-André-de-Rosans, Sainte-Colombe, Sainte-Marie, Saint-Pierre-Avez, Saléon, Salérans, Serres, Sigottier, Sorbiers, Trescléoux.

Department of Drôme (26)

Aulan, Ballons, Barret-de-Lioure, Eygalayes, Ferrassières, Izon-la-Bruisse, Laborel, Lachau, La Rochette-du-Buis, Mévouillon, Montauban-sur-l'Ouvèze, Montbrun-les-Bains, Montfroc, Montguers, Reilhanette, Rioms, Saint-Auban-sur-l'Ouvèze, Séderon, Vers-sur-Méouge, Villebois-les-Pins, Villefranche-le-Château.

Department of Vaucluse (84)

Aurel, Auribeau, Buoux, Castellet, Gignac, Lagarde-d'Apt, Monieux, Saignon, Saint-Christol, Saint-Martin-de-Castillon, Saint-Trinit, Sault, Sivergues, Viens.

5. **Link with the geographical area**

'Banon' originates in Haute-Provence around the municipality of Banon. It is a dry mid-range mountain region with landscapes made up of hills and plateaux. The climate is Mediterranean.

The area is characterised by a lack of water, as the groundwater runs deep inside the earth and the surface water receives exceptional and highly irregular precipitation mainly in the autumn and spring, with a marked shortage of rain in the summer.

The geographical area of 'Banon' is characterised by not very fertile soils that are mainly chalky, permeable and excellent at absorbing rainwater.

In that environment, low-density forest vegetation consisting of Aleppo pine, oak, broom, boxwood and scented plants alternates with heaths featuring scattered coppices and bushes and crops adapted to the harsh Provençal climate prevailing at medium altitudes: dry, sunny and often rather cold in the winter. It is an environment that provides areas well suited to rough grazing by goat herds.

The natural conditions of this region explain why pastoralism and low-yielding crops are an important part of its overall economy.

The goats feed essentially on pastureland and in forage areas. The breeders have introduced a specific production system incorporating the diversity of natural resources. Grazing combines three types of resources: natural grassland, woods and nitrogen-rich legumes. Most breeders tend their own goats. This enables them to supplement the goats' feed by letting them graze on sainfoin or lucerne growing on grassland, depending on the feed obtained from rough grazing and the season.

Provence is a region where there is a tradition of using rennet to make cheese, in contrast to northern France, which has a 'lactic' tradition (slow curdling lasting approximately 24 hours). As early as in the 15th century, King René was offered 'one of those small soft cheeses, from rennet'; the reference to rennet is clear.

The cheese-sieves traditionally used in Provence had large holes, indicating that the curd was rennet-based, as a lactic type of curd would leak out from such sieves.

In addition, the specific way of wrapping 'Banon' has a twofold objective: on the one hand, it helps preserve the cheese and, on the other, it is a method of production. It is a way of processing the fresh cheese which takes into account the need both to preserve the cheese and to improve it.

The product is processed principally by wrapping it in chestnut leaves. This process marks the transition from tomme to 'Banon'. The leaves insulate the cheese from the air and serve as an adjuvant, so that the cheese can acquire its aromatic characteristics.

Although it would seem that the leaves of numerous species could be used for the cheese (the vine plant, the chestnut tree, the plane tree, the walnut tree, etc.), in fact chestnut leaves must be used because of their solid structure and the quality of their tannin.

The history of 'Banon' starts at the end of the 19th century. Working on land that had little agronomic potential, local farmers tried to use the area's meager natural resources to best advantage: they engaged in subsistence mixed farming on a few parcels of good land and collected wood, hunted for game and picked mushrooms, small fruit, truffles and lavender in the less cultivated areas of the forest or heath. In addition to having a pig and a small poultry yard, each family also raised a small domestic herd composed of ewes but also of a few goats. These are complementary animals both on the land, where they make the most of the heath and surrounding undergrowth, and in terms of their economic usefulness. Sheep were used for meat, while the purpose of the goat as the 'poor man's cow' was to produce milk. The milk was consumed by the family but was also processed into cheese, which was the only way of preserving its nutritive value for a longer period of time.

The cheese was intended mainly for home consumption and any commercial value came from production above and beyond the needs of the family. Surplus cheeses then started to be sold at local markets.

It was precisely Banon, the administrative centre of the canton and the geographical centre of the Lure and Albion regions, a crossroads between major communication routes that was the most important venue for cheese fairs and markets.

The first reference to wrapped tommes of goat's cheese with the name 'Banon' can be found in the book '*Cuisinière provençale*', written by Marius Morard in 1886.

The post-war period saw the gradual introduction of new cheesemaking techniques. Goat herds became specialised and cheesemaking expanded beyond the home: while the cheese had formerly been produced first and foremost for the family's needs and secondarily for sale, now it began to be produced above all for sale, with any surpluses being consumed by the family.

According to J.M. Mariottini's study '*A la Recherche d'un fromage: le "Banon" éléments d'histoire et d'ethnologie*', rennet has always been used in the production of 'Banon', and it remains one of the rare cheeses to be made using this technique.

'Banon' is a soft cheese made from raw, whole goat's milk. It is produced by rapid curdling (using rennet or soft curd). The matured cheese is entirely wrapped in natural brown chestnut leaves and tied up with six to twelve strands of natural raffia forming a radial pattern.

'Banon' is characterised by:

— a creamy-yellow or golden-brown rind under the leaves,

— a velvety texture that melts in the mouth,

— animal - mainly goat-like - notes, often accompanied by ammoniac and undergrowth aromas, with a slight final bitterness.

The geographic area is influenced by the Mediterranean. Its soils are not very fertile; they mainly contain chalk, which usually shows through at the surface and does not retain water. These factors have resulted in scrubland vegetation comprising heath with gorse, hawthorn, blackthorn, rock rose, juniper, lavender, savory, thyme as well as chestnut trees. It is an ideal environment for goat breeding and pastoralism.

The use of soft curd is necessary because of the prevailing climatic conditions (high temperatures and dryness). Without specific techniques it is impossible in this region to cool the milk and then keep it at a low temperature in order to allow lactic bacteria to work without the milk turning sour. Therefore the curdling, i.e. the coagulation, of the milk must be activated with rennet.

Wrapping the tommes of cheese helped provide food all year round, in particular in the long winter months when the goats did not give milk.

'Banon' results from the combination of all these factors: a poor environment suited to extensive goat breeding and made the most of by man, a hot and dry climate leading naturally to the use of renneted curd and a processing technique (wrapping) permitting the long-term preservation of the cheeses.

Reference to publication of the specification

(the second subparagraph of Article 6(1) of this Regulation)

https://info.agriculture.gouv.fr/gedei/site/bo-agri/document_administratif-3ab11b39-00cf-48f7-a2b3-ac5e71b90836

COMMISSION IMPLEMENTING DECISION

of 14 May 2019

on the publication in the *Official Journal of the European Union* of the application for approval of an amendment, which is not minor, to a product specification referred to in Article 53 of Regulation (EU) No 1151/2012 of the European Parliament and of the Council for the name 'Beurre d'Isigny' (PDO)

(2019/C 177/03)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ([1]), and in particular Article 50(2)(a) in conjunction with Article 53(2) thereof,

Whereas:

(1) France has sent an application for approval of an amendment, which is not minor, to the product specification of 'Beurre d'Isigny' (PDO) in accordance with Article 49(4) of Regulation (EU) No 1151/2012.

(2) In accordance with Article 50 of Regulation (EU) No 1151/2012 the Commission has examined that application and concluded that it fulfils the conditions laid down in that Regulation.

(3) In order to allow for the submission of notices of opposition in accordance with Article 51 of Regulation (EU) No 1151/2012, the application for approval of an amendment, which is not minor, to the product specification, as referred to in the first subparagraph of Article 10(1) of Commission Implementing Regulation (EU) No 668/2014 ([2]), including the amended single document and the reference to the publication of the relevant product specification, for the registered name 'Beurre d'Isigny' (PDO) should be published in the *Official Journal of the European Union*,

HAS DECIDED AS FOLLOWS:

Sole Article

The application for approval of an amendment, which is not minor, to the product specification, referred to in the first subparagraph of Article 10(1) of Commission Implementing Regulation (EU) No 668/2014, including the amended single document and the reference to the publication of the relevant product specification, for the registered name 'Beurre d'Isigny' (PDO) is contained in the Annex to this Decision.

In accordance with Article 51 of Regulation (EU) No 1151/2012, the publication of this Decision shall confer the right to oppose to the amendment referred to in the first paragraph of this Article within three months from the date of publication of this Decision in the *Official Journal of the European Union*.

Done at Brussels, 14 May 2019.

For the Commission

Phil HOGAN

Member of the Commission

([1]) OJ L 343, 14.12.2012, p. 1.

([2]) Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

ANNEX

APPLICATION FOR APPROVAL OF AN AMENDMENT TO THE PRODUCT SPECIFICATION OF PROTECTED DESIGNATIONS OF ORIGIN/PROTECTED GEOGRAPHICAL INDICATIONS WHICH IS NOT MINOR

Application for approval of amendments in accordance with the first subparagraph of Article 53(2) of Regulation (EU) No 1151/2012

'Beurre d'Isigny'

EU No: PDO-FR-0138-AM01 — 19.10.2017

PDO (X) PGI (   )

1. **Applicant group and legitimate interest**

Syndicat Professionnel de Défense des Producteurs de Lait et Transformateurs de Beurre et Crème d'Isigny-sur-Mer — Baie des Veys (Professional Union defending the interests of the Milk Producers and Butter and Cream Makers of Isigny-sur-Mer — Baie des Veys)
2, rue du Docteur Boutrois
14230 Isigny-sur-Mer
FRANCE

Tel. +33 231513310
Fax +33 231923397
Email: ODG.beurrecremeisigny@isysme.com

Composition: The group is made up of milk producers and butter manufacturers. It therefore has a legitimate right to propose the amendments.

2. **Member State or Third Country**

France

3. **Heading in the product specification affected by the amendment(s)**

— ☐ Name of product

— ☒ Description of product

— ☒ Geographical area

— ☒ Proof of origin

— ☒ Method of production

— ☒ Link

— ☒ Labelling

— ☒ Other (contact details of the relevant Member State department and of the applicant group, contact details of the inspection body, national requirements)

4. **Type of amendment(s)**

— ☐ Amendments to the product specification of a registered PDO or PGI not to be qualified as minor within the meaning of the third subparagraph of Article 53(2) of Regulation (EU) No 1151/2012.

— ☒ Amendment to the product specification of a registered PDO or PGI for which a Single Document (or equivalent) has not been published and which cannot be qualified as minor in accordance with the third subparagraph of Article 53(2) of Regulation (EU) No 1151/2012.

5. **Amendment(s)**

5.1. ***'Description of product' section***

When the product specification was first registered in 1996, it covered both products: 'Beurre d'Isigny' and 'Crème d'Isigny'; the section describing the product characteristics has now been amended to place the focus solely on 'Beurre d'Isigny'.

Furthermore, the description of the colour of the product has been broadened to take account of seasonal variations in the dairy cows' diet, which affects the butter's colour. Instead of 'buttercup yellow', the colour is now defined as ranging 'from ivory to buttercup yellow'. The description of the texture of the product as 'smooth' has been supplemented with the words 'easily spreadable'. To better describe the product, the term 'fragrant', which is of little descriptive value, has been deleted. Instead, the product's scent is described as: 'scents of fresh cream and hazelnuts'. It is also added that the butter 'may be textured to make it suitable for lamination, so as to cater for all the product's potential uses'. This section also specifies that the butter 'may be salted' — which appears solely in the 'Production method' section of the current product specification. Lastly, the fat content of the two types of butter has been added: minimum 82 % fat for unsalted butter and 80 % fat for salted butter.

Thus the wording of the specification in force: 'These two dairy products boast outstanding characteristics. Their natural colour is buttercup yellow. They are fragrant and have a smooth texture.'

has been replaced by:

'The natural colour of "Beurre d'Isigny" ranges from ivory to buttercup yellow. Its smooth texture makes it easily spreadable. The butter often has scents of fresh cream and hazelnuts. It may be textured to make it suitable for lamination and it may be salted.

The unsalted butter has a fat content of over 82 %, whereas the fat content for salted butter is over 80 %.'

This paragraph has also been added to point 3.2 of the single document, replacing the sentence in the summary which describes the product as 'Butter with a natural buttercup yellow colour, as it is exceptionally rich in carotenoids.'

The reference to it 'being exceptionally rich in carotenoids' has also been included in the section on the causal link between the product specification and the single document, as the product description does not contain a target value for the butter's carotenoid content.

5.2. ***'Geographical area' section***

The section of the product specification entitled 'Definition of the geographical area' sets out all the steps that take place in the geographical area. The names of the area's various municipalities have also been updated.

The purpose of these amendments is to clarify the various steps and update the list of the municipalities, without altering the boundaries of the geographical area.

The product must be packaged within the geographical area. Packaging must therefore take place as soon as possible after production, partly to avoid the butter deteriorating in quality due to oxidation of the butterfat (which often occurs if the product is transported for long periods) and partly to avoid fraud (adulteration through mixing the butter with cheaper alternatives). The document also specifies that any freezing/deep freezing has to take place within the geographical area of origin. The intention of this amendment is to improve traceability and guarantee that the steps to be carried out in the geographical area take place successively and without any undue interruption.

5.3. ***'Proof of origin' section***

In the light of national legislative and regulatory developments, the text of the product specification under the heading 'Evidence that the product originates from the defined geographical area' has been consolidated to bring together provisions on declaration requirements and keeping registers for product traceability and monitoring production conditions.

New paragraphs have been therefore been added:

— the operator ID declaration and operators' various other declaration obligations, particularly as regards temporary cessation of production ('prior declaration of non-intent to produce' and 'prior declaration of resumption of production');

— ‘record keeping’, setting out livestock farmers’ obligations and replicating existing national provisions applicable to butter manufacturers; and

— the control mechanisms already provided for in existing national provisions: ‘The final stage of this entire procedure is that analytical and organoleptic tests are carried out without warning on random samples of packaged, ready-to-sell products.’

5.4. ***‘Method of production’ section***

The product specification provides more details on a number of aspects of the production method so as to better describe the production conditions for the milk and for making it into ‘Beurre d’Isigny’. These aspects strengthen the link with the geographical area.

Provisions on the management of the dairy herd (breed, feed) have been added to enable the traditional practices to be recorded.

Herd management

The dairy herd is defined as follows:

‘For the purpose of this product specification, “herd” means the entire bovine dairy herd of a holding, composed of lactating cows and dry cows.’

This definition in the product specification aims to clearly set out what livestock is referred to when using the terms ‘dairy herd’ and ‘dairy cows’, thus providing a framework for checks and avoiding any confusion.

In order to establish the link between the product and the geographical area, the requirement that grass constitutes the herd’s diet (whether through grazing or hay), in accordance with the local tradition in the geographical area of grassland-based livestock farming, has been ensured by the following provisions:

— ‘The herd must be put out to pasture for a period of at least seven months.’

— ‘At least 50 % of the main forage area of each holding must comprise grass. Each lactating cow must be allocated at least 0,35 hectares of meadow (natural, temporary or annual), of which at least 0,2 hectares are pasture, or of which at least 0,1 hectares are pasture supplemented with hay.’

Breed

To ensure that a significant amount of the milk used to make ‘Beurre d’Isigny’ comes from cows of the Normande breed (this being a component of the link between the geographical area and the product), the following has been added:

‘Milk from each collection used by the manufacturer to make “Beurre d’Isigny” must come from herds where at least 30 % of the cows are dairy cows of the Normande breed.’

To define the concept of ‘collection’ and specify how compliance with the provision will be monitored, the following has also been added:

‘A “collection” is defined as the total amount of milk collected and used by a manufacturer within a 48-hour period.’

These clarifications have also been made to point 3.3 of the single document.

The herd’s diet

To establish the link between the product and the geographical area through the majority of the dairy cows’ diet originating from the geographical area, it has been added that 80 % of the herd’s basic ration must come from the area, and on average at least 40 % of that ration during the grazing period and at least 20 % of the daily ration during the rest of the year must consist of fresh grass or hay. In addition, a positive list of authorised fodder has been drawn up in order to better define the type of fodder used. The following provisions have therefore been added to the product specification:

‘80 % of the herd’s basic ration, expressed as dry matter, must come from the geographical area. It must consist of the following fresh or preserved fodder: grass, corn, cereals or protein crops that are immature (the entire plant), straw, lucerne, fodder beet, root vegetables and dehydrated beet pulp.’

'For the minimum period of 7 months when the cows are put out to pasture, on average at least 40 % of the feed ration, expressed as dry matter, must consist of fresh grass or hay. For the rest of the year, the proportion of grass in the daily feed ration may not be less than 20 %, expressed as dry matter.'

These provisions on the herd's diet are also included under point 3.3 of the single document.

For dairy cows, the amount of supplementary feed provided is restricted to 1 800 kg, expressed as dry weight, per cow in the herd per calendar year. This is to avoid this feed constituting too large a proportion of the food supply, and to ensure that the basic ration comes from the geographical area.

The following paragraph has been added:

'The amount of supplementary feed provided is restricted to 1 800 kg, expressed as dry weight, per cow in the herd per calendar year.'

This provision has also been added to point 3.3 of the single document.

The product specification states that several products and raw materials may not be used to feed lactating cows, owing to their adverse impact on the organoleptic characteristics of the milk. The following paragraph has therefore been added:

'The following may not be used in the basic ration or as supplementary feed: cabbage, turnip, turnip rape and rapeseed given as green-feed.

The following raw materials may not be used in supplementary feeding stuffs pursuant to the classification in Part C to Regulation (EU) No 68/2013 on the Catalogue of feed materials:

— Palm, groundnut, sunflower and olive oils, as such or isomers thereof (Class 2.20.1)

— Milk products and products derived thereof (Class 8)

— Land animal products and products derived thereof (Class 9)

— Fish, other aquatic animals and products derived thereof (Class 10), with the exception of cod liver oil.

— Miscellaneous (Class 13), with the exception of glucose molasses.

Lastly, urea and its derivatives, being nutritional additives defined in Annex 1 to Regulation (EC) No 1831/2003 on additives for use in animal nutrition, are prohibited.'

These elements are also referred to under point 3.3 of the single document.

To better describe current practices, two sections have been added, each referring to a different stage in the manufacture of the butter: 'collection and receipt of the milk' and 'production and packaging'.

Collection and receipt of the milk

To avoid any deterioration in quality of the raw material on the farm, the time that the milk used to make 'Beurre d'Isigny' can be stored has been limited.

Furthermore, to improve traceability, no transhipment of milk may take place between the holdings and the plant where the butter is made.

Lastly, a parameter specifying the acidity of the raw milk has been added to guarantee that the raw material has not suffered any deterioration in quality.

Reference to these various aspects is made in the following provision:

'Collection must take place a maximum of 48 hours after the first milking. The milk collected on the holdings is transported and unloaded at the creamery without any transhipment. Upon receipt, the acidity of the raw milk must be between 14 and 16° Dornic, i.e. a pH of between 6,6 and 6,85.'

The whole of this provision has been reiterated under point 3.3 of the single document.

Production and packaging

Skimming and pasteurisation

A section has been added concerning skimming and pasteurisation. It states that 'the milk withdrawal period prior to skimming must last for no more than 48 hours following receipt', in order to preserve the quality of the raw material.

The two pasteurisation stages which enable the product in question to be produced have been added as follows:

'Prior to skimming, the full-cream milk collected may be subjected to initial pre-pasteurisation at 74 °C. After skimming, the cream is pasteurised at a temperature of between 86 and 95 °C for 30 to 180 seconds.'

This provision will complement the statement in the existing product specification that 'The milk and cream must be pasteurised'.

In addition, references to national legislative and regulatory requirements with regard to livestock and the milk and butter have been deleted.

Furthermore, a maximum period of time between finishing skimming of the milk and pasteurisation has been set to preserve the quality of the raw material: 'The cream must be pasteurised within no more than 36 hours after finishing skimming'.

To define the types of cream that may be used to make 'Beurre d'Isigny', it is stated that 'Cream to be used to make butter has a minimum fat content of 35 g per 100 g of product'.

As regards the various uses of the product at the time of skimming and pasteurisation, the following text has been added: 'light cream, raw cream, sterilised cream and UHT cream may not be used to produce the butter'.

This phrase has also been added under paragraph 3.3 of the single document.

The list of substances that may not be used to make 'Beurre d'Isigny' has also been expanded by specifying that buttermilk may not be used, nor is it allowed to add any additives, processing aids or any other ingredient, with the exception of milk starter cultures.

The paragraph:

'The following substances may not be used to produce or make "Beurre d'Isigny":

— whey cream, reconstituted, frozen or deep-frozen cream,

— colourings or antioxidants,

— or deacidifiers intended to lower the acidity of the milk or cream,'

has therefore been replaced by:

'Light cream, raw cream, sterilised cream and UHT cream may not be used to produce the butter.

Whey cream, buttermilk, reconstituted, frozen or deep-frozen cream, colourings or antioxidants, deacidifiers intended to lower the acidity of the milk or cream, additives, processing aids or any other ingredient, with the exception of milk starter cultures, may not be used for the production of cream used to make "Beurre d'Isigny"'.

The provision stating that 'all processes aimed at increasing the non-fat solid content, particularly through the incorporation of dairy starter cultures during working of the butter' has been moved to the section entitled 'Seeding and churning'; it restates and delineates the various stages involved in manufacturing the butter itself particularly the working (or churning) stage.

The provision that 'up to 2 g of salt may be added for every 100 g of butter' has also been moved to the section on 'Seeding and churning', and the limit of 2 g per 100 g has been removed in view of the fact that it is now stipulated in the general regulations.

Seeding and churning

A section has also been created to separate the instructions for seeding from those on churning. It mentions specifically that the seeding of the cream with lactic cultures takes place 'in the plant where the butter is made' within 48 hours of finishing skimming the milk. It has also been added that no more than 72 hours may elapse between the receipt of the milk and the seeding of the cream with lactic cultures.

The method of producing the butter is also described in greater detail, adding that this is done through the churning of seeded and matured cream (in a butter-making machine or churn), the resultant grains of butter being worked and, where appropriate, washed, and the finished butter having to have a pH of no more than 6.

Reducing the pH of the butter by any process other than biological maturation is prohibited. Addition of concentrated lactic acid permeate and aromatic yeast during the butter making process (the NIZO process) is also explicitly forbidden. The option of adding up to 2 g of salt per 100 g of butter has also been deleted, given that this has been included in the general regulations.

The section of the product specification on 'Seeding and churning' therefore reads as follows:

'The cream used to make "Beurre d'Isigny" is seeded in a butter plant no later than 48 hours after the milk has been skimmed, and no later than 72 hours after receipt of the milk, at a temperature of between 9 °C and 15 °C. It undergoes biological maturation for at least 12 hours at a temperature of between 9 °C and 15 °C, before being churned in a butter-making machine or churn. The grains of butter are subsequently worked and, where necessary, washed. At the end of the production process, the butter must have a pH of no more than 6.

Any process aimed at increasing the non-fat solid content, particularly by adding dairy starter cultures during the working of the butter, is prohibited. Similarly, any process to reduce the pH of the butter other than by biological maturation of the cream, particularly the addition of concentrated lactic acid permeate and aromatic yeast during the butter-making process (NIZO process), is prohibited.

Salt may be added to the butter within statutory limits.'

As regards 'texturing', it is stated that 'Beurre d'Isigny' may undergo texturing to make it more suitable for use by bakers and pastry chefs:

'"Beurre d'Isigny" can undergo the physical treatment of crystallisation, enabling it to acquire plasticity and mechanical resistance and resist without melting (dry butter) so that it can be used as a raw material in food preparations, specifically bakery and pastry products.'

This operation is necessary, as the melting point of the butter varies considerably depending on the season: it is softer in summer and harder in winter. Differences in the melting points stem from differences in the fatty acid composition of the butterfat content. Processing the butter reduces this variation, ensuring a more uniform consistency throughout the year. This transformation of the texture of the butter makes it eminently suitable for use in lamination. Such treatment does not alter the taste of the butter in any way. The butter was already being processed in this way when the PDO 'Beurre d'Isigny' was registered, but this fact had not been included in the product specification registered. Bakery and patisserie products enable all the qualities of the PDO 'Beurre d'Isigny' to find another form of expression.

Details of the packaging process are provided in order to lay down certain practices. A mention has been added that the butter, packaged as a unit of between 1 kg and a maximum 25 kg, may be frozen or deep-frozen for a maximum of 12 months. The butter must be frozen or deep-frozen no later than 10 days after the texturing stage (for textured butter) or no later than 30 days after manufacture (for non-textured butter). In such cases, the butter must be kept at a temperature between -18 °C and -23 °C.

Freezing the butter packaged in 1 kg sheets and in containers of more than 10 kg caters for the needs of certain firms operating in the food industry (bakeries, pastry manufacturers and biscuit manufacturers, etc.), which require butter with a consistency that confers certain specific characteristics required for their production processes. Freezing or deep-freezing for up to 12 months does not alter the butter's organoleptic characteristics. This standard practice, widely used in the dairy industry, has indeed proven its usefulness for conserving and preserving organoleptic qualities.

As regards packaging the butter, a specification has been added stating that the maximum unit of sale is 25 kg. This provision is in keeping with the tradition of packaging 'Beurre d'Isigny' in large containers (such as 20 to 200 litre wooden tubs, used in the 18th and 19th centuries). Butter may, however, be transported in heavier packaging units from one butter-making plant to another within the geographical area.

The relevant provision in the product specification is as follows:

'"Beurre d'Isigny" is packaged in sales units that do not exceed 25 kg in weight. Butter may be transported in heavier packaging units from one butter-making plant to another within the defined geographical area.

"Beurre d'Isigny" may be frozen or deep-frozen and kept at a temperature of between -18 and -23 degrees C solely if it is packaged in units of no less than 1 kg and no more than 25 kg for a period of time of no more than 12 months. The product is frozen or deep-frozen at most 10 days after production, in the case of textured butter, or at most 30 days after manufacture, in the case of non-textured butter.'

These rules have been partly reiterated under point 3.5 of the single document, 'Specific rules concerning slicing, grating, packaging, etc. of the product to which the registered name refers'.

5.5. ***Link***

The section of the product specification entitled 'Link to the geographical area' has been entirely rewritten to make the link between 'Beurre d'Isigny' and its geographical area more explicit, without making any fundamental changes. The milk production conditions have been specifically highlighted, especially the fact the cows' diet being based on the optimal use of grass, together with a long grazing period, makes it possible to achieve the milk fat content suitable for making 'Beurre d'Isigny', a process which requires skill and experience. We are taking this opportunity to delete the reference to 'Beurre d'Isigny' being rich in oleic acid, as it is not considered to be sufficiently specific.

The point on the 'Specificity of the geographical area' restates the geographical area's natural and human factors, summarising historical aspects and highlighting relevant specific know-how.

The point on the 'Specificity of the product' showcases some of the elements introduced in the description of the product.

Finally, the point 'Causal link' explains the interactions between the natural and human factors and the product.

The link referred to in the PDO's product specification is comprehensively reiterated under point 5 of the single document.

5.6. ***Labelling***

To clarify the aspects that enable consumers to identify the product:

— a statement has been added to the effect that products qualifying for the designation of origin must bear an individual label including the name of the designation of origin, and the letters on that label must be at least two thirds the size of the largest characters on the label. This rule does not apply to the logo if the name of the designation is found elsewhere on the labelling;

— the terms which must appear on the logo displayed on the packaging have changed: 'protégée' (protected) replaces 'contrôlée' (controlled). Printing the logo on the label is the responsibility of the operator tasked with producing the labelling;

— the European Union's PDO symbol must be placed right next to the logo (adjacent to or above the other, with no other information between them).

The provision prohibiting using the words 'Isigny' or 'Isigny-sur-mer' or any other word, graphic or illustration evoking that area to refer to products not meeting the conditions laid down in the product specification has been removed, as this is not relevant to the product specification.

The paragraphs:

'A logo bearing the words "Beurre d'Isigny — Appellation d'Origine Contrôlée" or "Crème d'Isigny — Appellation d'Origine Contrôlée" must be affixed to or printed on the wrappers or containers; it is the operator's responsibility to ensure this is done.

Using the words "Isigny", "Isigny-sur-Mer" or any other word, graphic or illustration evoking that area for the purpose of marketing butter which has not been produced, packaged and marketed in conformity with the decree conferring the designation is prohibited.'

have been replaced by:

'Each pack of PDO "Beurre d'Isigny" placed on the market must bear an individual label that includes the name of the designation of origin written in letters at least two thirds the size of the largest characters on the label.

A logo bearing the words "Beurre d'Isigny — Appellation d'Origine Protégée" must be affixed to or printed on the wrappers or containers; it is the operator's responsibility to ensure this is done.

The European Union's PDO symbol is placed right next to the logo, the one adjacent to or above the other, with no other information separating them. The minimum dimensions of the designation of origin do not apply to the logo if the designation can already be found elsewhere on the labelling.'

This change has also been made under point 3.6 of the single document, 'Specific rules applicable to the labelling of the product to which the designation refers'.

5.7. ***'Other' section***

In the section on the 'Competent authority of the Member State', the address of the INAO has been updated.

In the section on the 'Requesting group', the contact details of the group have been updated.

In the section of the product specification on 'References to the inspection body', the name and contact details of the official bodies have been updated. Under this heading, the contact details of the French authorities responsible for inspections at the national level are now provided, i.e. the National Institute of Origin and Quality (INAO) and the Directorate-General for Competition, Consumer Affairs and Fraud Prevention (DGCCRF). The name and contact details of the certification body can be consulted via the website of the INAO and in the European Commission's database.

A section on 'National requirements' has been added to the product specification. It sets out in a table the main points to check, their reference values and the evaluation method.

SINGLE DOCUMENT

'Beurre d'Isigny'

EU No: PDO-FR-0138-AM01 — 19.10.2017

PDO (X) PGI ( )

1. **Name(s)**

'Beurre d'Isigny'

2. **Member State or Third Country**

France

3. **Description of the agricultural product or foodstuff**

3.1. *Type of product*

Class 1.5. Oils and fats (butter, margarine, oil, etc.)

3.2. *Description of product to which the name in (1) applies*

The natural colour of 'Beurre d'Isigny' ranges from ivory to buttercup yellow. Its smooth texture makes it easily spreadable. The butter often has scents of fresh cream and hazelnuts. It may be textured to make it suitable for lamination and it may be salted.

The unsalted butter has a fat content of over 82 %, whereas the fat content for salted butter is over 80 %.

3.3. *Feed (for products of animal origin only) and raw materials (for processed products only)*

To guarantee a close link between the locality and the product through the herd being fed on grass from the geographical area, the dairy cows graze for at least seven months of the year and the holding must have a minimum area under grass of 0,35 ha for each dairy cow milked, of which a minimum of 0,2 ha is accessible from the milking parlour, or a minimum of 0,1 ha of grassland is accessible from the milking parlour with grass or hay provided as supplementary fodder. Each holding must have a main forage area comprising at least 50 % grass.

The entirety of the dairy cows' diet cannot be sourced from the geographical area. Indeed, the dairy cows' protein requirements cannot always be sourced from land cultivated within the geographical area. Neither can the origin of the raw materials constituting the supplementary feed be guaranteed. At least 80 % of the fodder-based basic ration, expressed as dry matter, of the herd per year is produced within the geographical area. Given that the basic ration comprises around 70 % of the dairy cows' total diet, the proportion of feed originating from the area can be estimated as at least approximately 56 %.

Grass in its different forms comprises at least 40 % on average of the basic ration during the minimum 7-month-long grazing period and at least 20 % of the daily ration for the rest of the year. The amount of supplementary feed provided is restricted to 1 800 kg per cow in the herd per calendar year.

The types of authorised fodder are: grass, corn, cereals or protein crops that are immature (the entire plant), straw and lucerne (fresh or preserved), fodder beet, root vegetables and dehydrated beet pulp.

Cabbage, turnip, turnip rape and rapeseed given as green-feed and urea and its derivatives may not form part of the basic ration or supplementary feed.

The following raw materials may not form part of supplementary feed:

— Palm, groundnut, sunflower and olive oils, as such or isomers thereof;

— Milk products and products derived thereof;

— Land animal products and products derived thereof:

— Fish, other aquatic animals and products derived thereof, with the exception of cod liver oil.

— Miscellaneous ingredients, with the exception of glucose molasses.

Milk from each collection used by the manufacturer to make 'Beurre d'Isigny' must come from herds where at least 30 % of the cows are dairy cows of the Normande breed, 'collection' being defined as the total amount of milk collected and used by a manufacturer within a 48-hour period.

Collection takes place a maximum of 48 hours after the first milking. The milk collected on the holdings is transported and unloaded at the site where the milk is skimmed without transhipment. Upon receipt, the acidity of the raw milk must be between 14 and 16° Dornic, i.e. a pH of between 6,6 and 6,85.

Cream used to make the butter must have a minimum fat content of 35 g per 100 g of product. Light cream, raw cream, sterilised cream and UHT cream may not be used to produce the butter.

3.4. *Specific steps in production that must take place in the defined geographical area*

The milk is produced and the butter made within the geographical area described in point 4.

3.5. *Specific rules concerning slicing, grating, packaging, etc. of the product to which the registered name refers*

Any freezing of the butter and packaging have to take place within the geographical area.

Packaging the butter is extremely important for ensuring the quality of the product, as butterfat is susceptible to oxidation. The product must therefore be packaged immediately after manufacture. The product is therefore packaged within the defined geographical area referred to under point 4 in sales units no larger than 25 kg.

The butter may be frozen or deep-frozen for a maximum of 12 months, on condition that it is packaged in units of between 1 and 25 kg. The product is frozen at most 10 days after manufacture in the case of textured butter, or at most 30 days after manufacture in the case of non-textured butter.

3.6. *Specific rules concerning labelling of the product to which the registered name refers*

Each pack of PDO 'Beurre d'Isigny' cheese sold must bear an individual label that includes the name of the designation of origin written in letters at least two thirds the size of the largest characters on the label.

A logo bearing the words 'Beurre d'Isigny — Appellation d'Origine Protégée' must be affixed to or printed on the wrappers or containers; it is the operator's responsibility to ensure this is done.

The European Union's PDO symbol is placed right next to the logo, the one adjacent to or above the other, with no other information separating them. The minimum dimensions of the designation of origin do not apply to the logo if the designation can already be found elsewhere on the labelling

4. **Concise definition of the geographical area**

The defined geographical area covers the territory of all the municipalities of the following departments:

In the Department of Calvados (82 municipalities):

All the municipalities in the canton of Bayeux with the exception of Chouain, Condé-sur-Seulles, Ellon, Esquay-sur-Seulles, Juaye-Mondaye, Le Manoir, Manvieux, Ryes, Tracy-sur-Mer, Vaux-sur-Seulles and Vienne-en-Bessin.

All the municipalities in the canton of Trévières with the exception of La Bazoque, Cahagnolles, Cormolain, Foulognes, Litteau, Planquery, Sainte-Honorine-de-Drucy and Sallen.

In the Department of La Manche (93 municipalities):

In the canton of Agon-Coutainville, the municipalities of Auxais, Feugères, Gonfreville, Gorges, Marchésieux, Nay, Périers, Raids, Saint-Germain-sur-Sèves, Saint-Martin-d'Aubigny and Saint-Sébastien-de-Raids.

In the canton of Bricquebec, the municipalities of Etienville, Les Moitiers-en-Bauptois and Orglandes.

All of the municipalities in the canton of Carentan-les-Marais.

In the canton of Créances, the municipalities of Montsenelle (solely the territories of the former municipalities of Coigny, Prétot-Sainte-Suzanne and Saint-Jores) and Le Plessis-Lastelle.

All the municipalities in the canton of Pont-Hébert, with the exception of Bérigny, Saint-André-de-l'Epine, Saint-Georges-d'Elle, Saint-Germain-d'Elle and Saint-Pierre-de-Semilly.

All the municipalities in the canton of Saint-Lô-1, with the exception of Agneaux, Le Lorey, Marigny-Le-Lozon (solely the territory of the former commune of Lozon), Le Mesnil-Amey, Saint-Gilles and Saint-Lô.

All the municipalities of the canton of Valognes, with the exception of Brix, Huberville, Lestre, Lieusaint, Montaigu-la-Brisette, Saint-Germain-de-Tournebut, Saint-Joseph, Saint-Martin-d'Audouville, Saussemesnil, Tamerville, Valognes, Vaudreville and Yvetot-Bocage.

5. **Link with the geographical area**

The geographical area of production of 'Beurre d'Isigny' is crescent-shaped, situated on sedimentary terrain and at a low altitude (< 50 m). This area, known as the Col du Cotentin, constitutes a remarkable geological area sculpted by multiple marine transgressions and regressions. Within that area, a distinction is made between the 'Bas Pays', consisting of large tidelands and alluvial marshes which, although drained, may flood, and, to the east, the 'Haut Pays', a landscape characterised by hedgerows, consisting of a plateau, limestone blocks and low clay and stony hills. The high quantities of marine alluvial deposits (coastal sediment deposited by the English Channel) and fluvial deposits, mainly confined to the Baie des Veys and its associated river valleys, constitute the key characteristics of the soil.

Receiving around 800 mm of precipitation and having more than 170 days of rainfall evenly spread throughout the year, as well as cool summer temperatures and mild winters and more restricted temperature ranges than Saint-Lô or Caen, the Col du Cotentin is referred to as having a temperate oceanic climate. Owing to the absence of hills, this humid, foggy and mild climate is homogeneous. The influence of the ocean can also be seen in the prevalence of spray coming off the sea and condensing on the pastures.

The Col du Cotentin is one of the areas of Normandy with a high concentration of pastureland that predates the trend of converting arable land to pasture, which started in 1800. Livestock farmers made the Isigny region a pastoral area of some prestige; in 1874, the Association Normande described it as possessing 'rich pastures, veritable fountains of cream and butter'.

From the mid-19th century, Cotentin Peninsula livestock farmers began defending the purity of the Cotentine breed of cattle which, primarily because of its milk production capacity, ended up becoming the main source of the Normande breed. However, this status of 'the origin of the breed' penalises local breeders who have been slow to benefit from progress in artificial insemination and hence are reverting to using the productive and homogenous Prim'Holstein breed.

The population of the Col du Contentin quickly learnt to benefit from the dairy herd's optimal use of grass by making the most of the milk to make and sell butter.

Today, grazing once again forms the basis of the dairy cows' diet; they graze on grass for at least seven months and consume it as hay the rest of the year. The predilection of producers for the Normande breed, an excellent butter producer owing to its milk being rich in fats and proteins, has enabled it to survive in the geographical area and make up a significant proportion of the local herd.

The production technique depends on: ensuring the milk stays fresh by maintaining a cool temperature from the cowshed to the butter-making plant; the regularity of milk collections; natural maturation coupled with controlling the fermentation through pasteurisation; and then seeding the milk with lactic cultures; skimming and, finally, churning.

'Beurre d'Isigny' is smooth and easily spreadable. After texturing, it is firm and malleable, neither fatty nor sticky, and not friable. It has a homogenous ivory colour in winter and is buttercup yellow during the grazing season, and has aromas that are reminiscent of fresh cream. Its delicate flavour may also contain hints of hazelnuts.

The geographical location (proximity to the sea) and morphology (absence of hills) of the geographical area explains why rainfall is evenly spread throughout the year and temperatures are favourably mild even in winter. These elements are favourable to the growth of grass throughout the year and a long grazing period for the animals. The clay-limestone soil, derived from recent marine sediments and rich in minerals, produce an abundance of pasture, whereas the loamy soils surmounting the 'Haut Pays' are noteworthy for their regulation of the water content, which favours regular grass growth.

The quality of the fat content of the milk from the geographical area is produced by the combined effect of the cows being grass-fed, which gives the PDO product its specific organoleptic qualities and expected smoothness, and the supply of fodder with a higher energy value, which promotes the formation of large fat globules; these enable the fixation of the milk's aromatic compounds conferred by the grass.

'Beurre d'Isigny' is therefore characterised by an optimal use of the area's grassland, along with a long grazing period for the dairy herd, and the provision of preserved feed during the winter in conjunction with other types of feed. Transporting fodder from the 'Bas-Pays' to the 'Haut-Pays' and its preservation is a traditional practice locally, because the farms were generally located in the 'Haut-Pays', while also having pasture in the 'Bas-Pays'.

It is the diet of the herds, which are partly composed of Normande cows, that results in high-quality milk with the high fat content that gives the product its superbly smooth texture.

In addition, the presence of carotenoids in the lush grass of the region's pastures is conducive to the butter having a natural buttercup yellow colour during the grazing season.

The continuation of traditional butter-making techniques, i.e. not adding flavouring or lactic acid and using naturally matured cream and churning, is the key to expressing the characteristics of the raw material produced by the dairy herds in the final product. The products' success can also be explained by the close commercial relations with a network of dairies across France, the restaurant trade in the region, and export markets.

Reference to publication of the specification

(the second subparagraph of Article 6(1) of this Regulation)

https://info.agriculture.gouv.fr/gedei/site/bo-agri/document_administratif-ba1010a1-bc3a-4468-a1d2-7578d8fd5494

NOTICES CONCERNING THE EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

Invitation to submit comments pursuant to Article 1(2) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice on state aid issues

(2019/C 177/04)

By means of the above referenced Decision, reproduced in the authentic language on the pages following this summary, the EFTA Surveillance Authority notified Norway of its decision to initiate proceedings pursuant to Article 1(2) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice concerning the abovementioned measure.

Interested parties may submit comments on the measure in question within one month of the date of publication to:

EFTA Surveillance Authority
Registry
Rue Belliard 35
1040 Bruxelles/Brussel
BELGIQUE/BELGIË

The comments will be communicated to the Norwegian authorities. The identity of the interested party submitting the comments may be withheld following a request in writing stating the reasons for the request.

SUMMARY

Procedure

1. The Authority received two complaints on 14 March 2017 and 27 July 2017. The complainants have requested confidentiality.

2. Following requests, the Authority received information from the Norwegian authorities by letters dated 2 June 2017, 20 September 2017, 1 December 2017, 8 December 2017, 1 February 2018, 5 February 2018, 21 February 2019, 14 March 2019 and 18 March 2019.

Description of the measure(s)

3. The alleged aid beneficiary is Trondheim Spektrum AS ('TS').

4. TS owns and operates Trondheim Spektrum, a multipurpose facility located in central Trondheim. The venue is used as training venues for local sports clubs, small and large sports events and other events such as concerts, trade fairs and congresses.

5. The Municipality of Trondheim ('the Municipality') has been, and is at present, the majority shareholder in TS. The remaining shares are held by membership-based volunteer sport clubs ('sport clubs').

6. The objective of the Municipality is to provide facilities for sports and leisure activities to the inhabitants of Trondheim. In 2004 the Municipality formalised a principle of cost free facilities for the benefit of the Municipality's sport clubs. This measures of the Municipality facilitates participation of children and youth in sport activities irrespective of the income level of individual families.

7. The Municipality rents capacity from different facilities, such as TS, for the purposes of providing the capacity, free of charge, to the sport clubs. The task of distributing the capacity is entrusted to the local sports council.

8. Since summer 2017, TS has been undergoing a significant renovation and extension to be finalised in 2019. The plan is to host the European championship in handball for women and men in 2020.

9. The Decision concerns nine measures (1) municipal loan, (2) municipal guarantee, (3) leasehold agreements, (4) lease agreements concluded from 1999 and 2017, (5) lease agreement of 2019, concluded in 2017, (6) capital increase linked to new and unexpected costs, (7) financing of infrastructure costs, (8) funds from the Norwegian Gaming Fund and (9) implicit guarantee inherent in a loan Agreement between Nordea and TS.

10. According to the complainants, TS has received an advantage through different measures granted by the Municipality. The complainants have argued that the alleged aid measures have cross-subsidised other activities carried out by TS.

Assessment of the measures

11. In the Authority's view, any potential state aid granted through measures 1, 2 and 3 would constitute existing aid within the meaning of Article 1(b) of Part II of Protocol 3 SCA. The Authority does therefore not assess the aid character of these measure further in its decision.

12. In its decision, the Authority comes to the preliminary conclusion that measure 4, the lease agreements concluded between 1999 and 2017, do not form part of an aid scheme within the meaning of Article 1(d) of Part II of Protocol 3 to the SCA as had been argued by the Norwegian authorities.

13. The Authority will only assess in its decision the potential aid character of the lease agreements for which the limitation period has not expired. Based on the information in its possession, the Authority considers that the limitation period for the lease agreement referred to as dating from 2007 – 2008 by the Norwegian authorities has not expired.

14. The Authority considers that the funds granted to TS from Norsk Tipping AS, referred to as measure 8, are an application of an existing system of state aid. The Authority therefore does not assess the aid character of the measure further in its decision.

15. The Authority takes the preliminary view that the lease agreements from 2007 to 2017 as well as the new lease agreement of 2019 (measures 4 and 5) may have granted and advantage to TS. The complainants have argued that the rent is above market terms and that the rent is based on the needs of TS and not the capacity needed by the Municipality.

16. The Authority finds that the capital increase, measure 6, constitutes an advantage to TS corresponding to the full amount of the capital increase.

17. The Authority comes to the preliminary conclusion that the division and calculation of infrastructure costs with regard to the renovation and extension of TS (measure 7) may have granted an advantage to TS.

18. As regards the implicit guarantee inherent in the loan agreement between TS and Nordea (measure 9), the Authority finds the effects of the statements in the loan agreements unclear and can, at this point, not exclude that they provide an advantage to TS in the form of an implicit guarantee from the Municipality.

19. The Norwegian authorities have argued that the use of TS facilities by the sport clubs cannot be considered as an economic activity, given that neither the Municipality nor TS receive any remuneration form its users.

20. Even if the Municipality can be considered to be carrying out a non-economic activity by offering cost-free facilities for the Municipality's sport clubs, in principle, the entity supplying the Municipality with such facilities, might very well be carrying out economic activities when doing so.

21. On that background, the Authority cannot exclude, at this point, that TS is an undertaking, not only when hosting concerts, large sporting events, fairs, congresses and other events, but also when renting out its facilities to the Municipality which then provides the hall space for the city's sport clubs. In any event, the Authority notes that TS carries out other economic activity and a sufficient separation of accounts would have to be demonstrated.

22. The Norwegian authorities have not notified all of the measures in question to the Authority. The Authority therefore reaches the preliminary conclusion that the Norwegian authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3 SCA, and that to the extent measures 4, 7 and 9 entail state aid, that aid is unlawful.

23. The Norwegian authorities notified the new lease agreement of 2019, measure 5, on 20 November 2018. The Norwegian authorities have argued that the new lease agreement is conditional upon being in line with market terms. It explicitly enables adaptations in order to bring the conditions of the agreement in line with market terms should the Authority so require. In light of this, the Authority's preliminary conclusion is that, should the lease agreement entail state aid, the Norwegian authorities have respected the requirements set out in Article 1(3) of Part I of Protocol 3 SCA.

24. As regards measure 6, the Authority notes that the Norwegian authorities have granted this aid to TS under Article 55 of the GBER. However, the Authority is not fully convinced that the requirements set out in Article 6(2) GBER are fulfilled in relation to the measure. Further assessment of the measure seems required. If the Authority would find that the measure does not fulfil the requirements of the GBER, this aid is unlawful.

25. The possible aid measures in the case at hand are of various nature. The Norwegian authorities have argued compatibility as regards some of the measures. At this stage, the Authority does not have the information to enable it to set out the possible amount of alleged aid granted to TS that would result from these measures. The Authority therefore has doubts whether the measures would respect the principle of proportionality and be limited to what is necessary to achieve the state objective.

26. Furthermore, the Authority cannot exclude cross-subsidization from the alleged aid measures to the other activities carried out by TS. In light of the above, the Authority has doubts whether the measures could be deemed compatible under Article 61(3)(c) of the EEA Agreement.

Decision No 032/19/COL

of 16 April 2019

to open a formal investigation into potential state aid granted to Trondheim Spektrum AS

(Case 83227)

Norwegian Ministry of Trade, Industry and Fisheries
PO Box 8090 Dep
0032 Oslo
NORWAY

Subject: **Trondheim Spektrum**

1. Summary

(1) The EFTA Surveillance Authority ('the Authority') wishes to inform the Norwegian authorities that it has concerns that the notified measure and some of the measures covered by the complaints related to Trondheim Spektrum AS might entail state aid within the meaning of Article 61(1) of the EEA Agreement. The Authority furthermore has doubts concerning the compatibility of these measures with the functioning of the EEA Agreement. The Authority has therefore decided to open a formal investigation ([1]) into these measures.

(2) The Authority has based its decision on the following considerations.

2. Procedure

2.1. *First complaint*

(3) On 14 March 2017, the Authority received a complaint ([2]) alleging that Trondheim municipality ('the Municipality') has granted unlawful state aid to Trondheim Spektrum AS ('TS'), a company that owns and operates Trondheim Spektrum, which is a multipurpose sport facility located in Trondheim, Norway. By letter dated 27 March 2017, the Authority invited the Norwegian authorities to comment on the complaint ([3]). The Norwegian authorities replied by letter dated 2 June 2017 ([4]).

([1]) Reference is made to Articles 4(4) and 13(1) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.
([2]) Documents No 847105 and 848590 to 848601.
([3]) Document No 849708.
([4]) Documents No 859505, 859499, 859501 and 859503.

2.2. *Second complaint*

(4) On 27 July 2017, the Authority received a second complaint [5], also alleging that the Municipality has granted unlawful state aid to TS. By letter dated 24 August 2017, the Authority invited the Norwegian authorities to comment [6]. In the same letter, the Authority requested further information from the Norwegian authorities concerning their comments to the first complaint. By letter dated 1 September 2017, the Authority forwarded to the Norwegian authorities additional information from the second complainant [7].

(5) By letter dated 20 September 2017, the Norwegian authorities submitted their comments to the second complaint and provided the information requested by the Authority relating to the first complaint [8]. On 29 September 2017, the case was further discussed during the annual package meeting in Oslo. The discussion was subsequently summarised in a follow-up letter [9].

2.3. *Request for information*

(6) On 20 October 2017, the Authority sent an information request to the Norwegian authorities [10]. On 22 November 2017, the Norwegian authorities and the Authority held a video-conference to discuss the information request. By letter of 8 December 2017, the Norwegian authorities responded [11].

2.4. *Additional information from the second complainant*

(7) On 19 September 2017, the second complainant submitted additional information [12]. On 6 November 2017, the second complainant submitted supplementary information [13]. On 9 November 2017, the Authority forwarded the additional information to the Norwegian authorities [14]. On 22 November and 13 December 2017, the Norwegian authorities and the Authority discussed the case during a video-conference. On 1 December 2017, the Norwegian authorities submitted information to the Authority in relation to the meetings [15].

(8) On 26 October 2018, the second complainant submitted additional information [16].

2.5. *Further request for information and meeting*

(9) On 16 January 2018, the Authority sent an information request to the Norwegian authorities [17], to which they replied by letters dated 1 and 5 February 2018 [18].

(10) On 13 March 2019, the Norwegian authorities and the Authority discussed the case during a video-conference. Following the meeting, the Norwegian authorities submitted further information [19]. On 18 March 2019, the Norwegian authorities submitted additional information [20].

2.6. *Notification of the 2019 lease agreement*

(11) On 29 November 2018 [21], the Norwegian authorities notified a lease agreement ('the 2019 lease agreement'), which is intended to enter into force on 1 December 2019. By letter dated 28 January 2019, the Authority requested additional information from the Norwegian authorities. By letter of 21 February 2019, the Norwegian authorities responded [22].

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(5) Documents No 867151, 868181 and 868182.
(6) Document No 870428.
(7) Document No 870360.
(8) Documents No 874440 and 874442.
(9) Document No 876728.
(10) Document No 877379.
(11) Documents No 887522, 887524 and 887526.
(12) Document No 874067.
(13) Document No 881377.
(14) Document No 888352.
(15) Documents No 885827, 885829, 888351 and 888354.
(16) Document No 936140.
(17) Document No 888021.
(18) Documents No 896729, 896727, 896725 and 896723.
(19) Documents No 1059166, 1059170 and 1059171.
(20) Documents No 1059842 to 1059848.
(21) Documents No 1040641, 1040643, 1040645, 1040647 and 1040649.
(22) Documents No 1054292, 1054294, 1054296 and 1054298.

2.7. ***GBER information sheet regarding capital increase***

(12) On 10 December 2018, the Norwegian authorities submitted a GBER ([23]) information sheet ([24]), concerning *ad hoc* aid to TS in the form of a NOK 55 million capital increase (approximately EUR 5,68 million), claiming that this measure was block exempted.

3. **Background**

(13) TS owns and operates Trondheim Spektrum, a multipurpose facility located in central Trondheim. The facility consists of eight multi-purpose halls. The halls are used as training venues for local sports clubs, small and large sports events and other events such as concerts, trade fairs and congresses.

(14) The company Nidarøhallen was established in 1961 for the purpose of carrying out the construction and operation of a sports and exhibition hall in Trondheim. On 5 June 2002, the company name was changed to Trondheim Spektrum AS.

(15) The Municipality has been, and is at present, the majority shareholder in TS. As of October 2018, The Municipality holds 96 % of the shares. The remaining shares are held by membership-based volunteer sport clubs ('sport clubs').

(16) The construction of the first part of the hall finished in 1963 (halls A and B). The facility has been expanded four times, in 1971 (hall C), 1980 (hall G), 1988 (halls D and E/H) and 2000 (hall F). The facility now totals 27 000 m^2, which, in addition to eight multipurpose halls, consists of 14 seminar rooms and a plot area of over 1 000 m^2.

(17) The Municipality's objective is to provide facilities for sports and leisure activities to the inhabitants of Trondheim. In 2004, the Municipality formalised a principle of cost-free facilities for the benefit of the Municipality's sport clubs. This facilitates participation of children and youth in sport activities, irrespective of the income level of individual families. The Municipality owns and operates numerous sport facilities, but also rents facilities owned and operated by third parties. The Municipality rents capacity from such facilities under special rental agreements, and the joint capacity is distributed, free of charge, amongst the sport clubs. The task of distributing the capacity is entrusted to the local Sports Council (*Idrettsrådet*), which forms part of the organisational structure of the Norwegian Confederation of Sports (*Norges idrettsforbund*).

(18) TS generates income from sport activities, trade fairs and concerts. TS hosts a number of fairs, which includes an annual fisheries industry fair. Furthermore, TS generates income from the operation of a kiosk, café and a restaurant.

(19) Since summer 2017, Trondheim Spektrum has been undergoing a significant renovation and extension, to be finalised in 2019. The plan is to host the European Championship in handball for women and men in 2020.

4. **The measures**

4.1. ***Introduction***

(20) Throughout the years, the Municipality has provided TS with loans, guarantees and other measures that may potentially involve state aid. The following measures are at stake in the present decision.

4.2. ***Measure 1 – municipal loan***

(21) In 1992, the total loan portfolio of TS included nine different loans amounting to a total of NOK 87.8 million (approximately EUR 9,1 million). During the period from 1992 to 1994, TS restructured the debt by borrowing NOK 86.67 million (approximately EUR 8,95 million) from the Municipality ([25]). The nominal interest rate was set at 7,5 %, and the effective interest rate was at 7,7 %. In 2004, the terms of the loan were modified, lowering the effective interest rate to 4,15 %.

(22) The complainants allege that the intention of the Municipality, by granting the loan, was to grant an advantage to TS, which it would not have obtained otherwise, in the form of lower interest rates. The complainants further allege that later modifications of the loan have turned the alleged aid into new aid.

([23]) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1), referred to at point 1j of Annex XV to the EEA Agreement, see Joint Committee Decision No 152/2014, published in OJ L 342, 27.11.2014, p. 63 and EEA Supplement No 71, 27.11.2014, p. 61.

([24]) Case No 82883, GBER 30/2018/Sports.

([25]) Document No 874440, p. 6 and Document No 859501, p. 13 and 20.

(23) The Norwegian authorities have not contested the fact that the loan may have entailed state aid. The Norwegian authorities have argued that the interest rates, in particular following the modification in 2004, were broadly in line with market price. However, the Norwegian authorities do not consider it meaningful to investigate further the historical market rates for loans as, in their view, any aid would have to be considered as existing aid, and in any event, the loan has in the meantime been paid back in full ([26]). The Norwegian authorities have not found any documentation indicating that the loan has been renegotiated as alleged by the complainants, save for the modification of the interest rate in 2004 ([27]).

4.3. *Measure 2 – municipal guarantee*

(24) On 7 September 1999, the Municipality granted a guarantee in favour of TS, in order for TS to secure a loan from Nordea. The purpose of the loan was to finance the construction of hall F. The guarantee was limited to 50 % of the loan balance with a limit of NOK 28 million (approximately EUR 2,89 million). The guarantee is of a secondary nature. That is, Nordea would have to initiate a procedure for the liquidation of TS' assets, before it could have recourse to the guarantee.

(25) According to the Norwegian authorities' best estimate, the interest rate obtainable without the guarantee corresponds to an addition of 0.10 – 0.15 percentage points. The Norwegian authorities have explained that this is because TS is viewed by Nordea as a low-risk debtor. On Nordea's six-point scale, with six representing no risk, TS is and has been rated at five. The reason behind this rating is first, the fact that the majority of the shares in TS is held by a public authority and secondly, TS' low-risk lease agreement with the Municipality represents a substantial part of its revenues. Further, a guarantee of this nature is of marginal value to the bank, as the mandatory capital requirements are similar for loans without such partial and limited guarantee ([28]). The guarantee is still in effect. It expires in 2031 ([29]). At the end of 2016, it covered the outstanding balance of NOK 9 260 000 (approximately EUR 956 500).

(26) The complainants have alleged that the guarantee was not granted on market terms and therefore provided an advantage to TS.

(27) The Norwegian authorities state that any advantage resulting from the guarantee is at most marginal and further refer to marginal effects of the measure on the conditions of cross-border investment or establishment ([30]). The Norwegian authorities maintain that the guarantee should be qualified as existing aid as it was granted more than 10 years ago ([31]).

4.4. *Measure 3 – leasehold agreements*

(28) In 1980, the Municipality entered into a 40-year leasehold agreement with Trondheim Tennisklubb. The leasehold was transferred to Nidarøhallen A/S (now TS) in 1991. A second leasehold agreement was concluded in 1989. TS has relied on these leasehold agreements as collateral when entering into a loan agreement with Nordea ([32]).

(29) According to the Norwegian authorities, the leasehold agreements are governed by the Norwegian Ground Lease Act ([33]) and established case-law.

(30) To offer collateral on a leasehold agreement does not require the permission from the lessor (the owner) under the Ground Lease Act, the Land Registration Act ([34]) or the leasehold agreement.

(31) The Norwegian authorities have stated that the leasehold agreements were concluded before the entry into force of the EEA Agreement ([35]).

([26]) Document No 859501, p. 20.
([27]) Document No 874440, p. 6.
([28]) Document No 859501, p. 14.
([29]) Document No 859501, p. 14.
([30]) Document No 859501, p. 22.
([31]) Document No 859501, p. 23.
([32]) Document 1054294. See section 4.10.
([33]) *Lov om tomtefeste (tomtefesteloven)* LOV-1996-12-20-106. The Norwegian authorities have explained that the conclusion of leasehold agreements and the contractual relationship between the landowner/lessor and the lessee was regulated for the first time in a statute from 1975, which entered into force on 1 January 1976. A new Ground Lease Act was enacted in 1996 and entered into force on 1 January 2002.
([34]) *Lov om tinglysing (tinglysingsloven)* LOV-1935-06-07-2.
([35]) Document No 887522, p. 4.

4.5. ***Measure 4 – lease agreements concluded from 1999 to 2017***

(32) Most of the capacity of Trondheim Spektrum has traditionally been used for the purpose of sport clubs on the basis of lease agreements concluded between TS and the Municipality. The Municipality has leased the facility since it opened in 1963.

(33) The Municipality formalised a principle of cost-free facilities for the benefit of the Municipality's sport clubs in 2004. This was done to facilitate the participation of sport activities irrespective of the income level of individual families. From then on, the sport clubs did not pay for its use, neither to the Municipality nor to TS.

(34) The Municipality rented the facilities from Trondheim Spektrum for approximately NOK 12 million per year from 1990 until 2002. In 2002, the lease agreement was amended as the Municipality required more capacity. The variations of rent paid is a result of the capacity increase with the construction of hall F, and the implementation of a new model for calculating the agreed utilisation of the facility ([36]).

(35) The Norwegian authorities have explained that the level of rent takes into account the cost structure of TS. The historical rent was set on the basis of the level established in 1989 and 1990, which historically reflected the required cash flow for TS to pay off debt and continue operations on the proportion of the facility occupied by the sport clubs ([37]).

(36) The lease agreement was not formalized until February 1995. The lease agreement entered into in 1995 does not specify the number of hours and/or percentage of occupation of the sport clubs' use of the facility. These specificities were introduced and further developed in the agreements entered into for 1999 onwards ([38]).

(37) The following lease agreements have been concluded since 1999:

a. Lease agreement 2000 – 2002.

b. Lease agreement 2002 – 2006.

c. Lease agreement 2007 – 2008.

d. Lease agreement 2009 – 2010.

e. Lease agreement 2011 (renewed annually) ([39]).

(38) The Norwegian authorities have provided the following information regarding the leased capacity ([40]):

Year	Rent paid (NOK)	Hours rented
1999	11 200 000	Not given
2000	11 200 000	13 650
2001	11 200 000	13 650
2002	11 200 000	17 300
2003	14 000 000	17 300
2004	14 000 000	17 300
2005	14 300 000	17 300
2006	14 500 000	17 300

([36]) Document 874440, p. 5.
([37]) Document 874440, p. 10.
([38]) Document 859501, p. 14.
([39]) Document No 859501, p. 14–15. However, it can be observed that there was a reduction in the capacity in 2016. This indicates that amendments were made at least that year. The Norwegian authorities have explained that this is due to the renovation of TS (Document 874440, p. 9).
([40]) Document 859501, p. 15.

Year	Rent paid (NOK)	Hours rented
2007	14 700 000	12 500
2008	14 000 000	12 500
2009	14 300 000	12 500
2010	14 443 000	12 500
2011	14 088 000	12 500
2012	14 234 000	12 500
2013	14 234 000	12 500
2014	14 234 000	12 500
2015	14 679 522	12 500
2016	14 105 196	11 650

(39) According to the terms of the lease agreements, the capacity of Trondheim Spektrum should be reserved for the sport clubs, from 1 September to 1 May each year, during the afternoon on weekdays from 16:00 to 23:00 and on weekends from 09:00 to 22:00. TS can therefore offer Trondheim Spektrum's capacity outside of these hours and outside the said time of year.

(40) Furthermore, the lease agreements provide that TS can reclaim, subject to the terms laid down in the lease agreement, up to 2 000 hours annually during the period from 1 September to 1 May. TS can therefore use the facilities, which are otherwise reserved under the lease agreements for other purposes, for those specific hours. The Norwegian authorities have explained that TS has reclaimed 945 – 2 173 hours annually from 2010 to 2017 ([41]). The Norwegian authorities explained that there is no mechanism for the reduction of the overall rent when TS reclaims rented hours ([42]).

(41) The complainants have argued that the rent is above market terms. That is, the rent is based on the needs of TS, and not the capacity needed by the Municipality. The complainants allege that the rental fee has never been based on arm's length negotiations, but decided unilaterally by the municipal board of the Municipality.

(42) According to the Norwegian authorities, the rent paid to TS by the Municipality has been market conform and thus does not entail state aid. Were the Authority to conclude differently, the Norwegian authorities argue that the lease agreement forms part of an existing aid scheme. Furthermore, any new aid would, in any event, be compatible with the functioning of the EEA Agreement.

4.6. ***Measure 5 – lease agreement of 2019 – notification***

(43) As set out in paragraph (11) above, the Norwegian authorities have notified the lease agreement of 2019.

(44) TS and the Municipality have concluded a new lease agreement, which is set to enter into force on 1 December 2019. The agreement is conditional upon being in line with market terms. The agreement allows for adaptations by the Municipality, in order to conform to the market economy investor principle, should the Authority so require ([43]). The agreement will expire on 30 April 2035.

(45) The Norwegian authorities have explained that this lease agreement is based on the same principles underlying previous lease agreements. The Norwegian authorities have further explained that the new lease agreement represents a substantial increase in the capacity made available for the sport clubs.

([41]) The Norwegian authorities were not able to provide data from before 2010.

([42]) Document 896727, p. 6.

([43]) Article 12 of the 2019 lease agreement. Norwegian: '*Denne avtalen forutsettes å være inngått på markedsmessige vilkår. Det tas forbehold om at avtalen vil – forut for og i avtaleperioden – justeres for å tilfredsstille eventuelle føringer/krav fra EFTAs overvåkningsorgan (ESA), og/eller andre offentlige myndigheter. Dette for at avtalen til enhver tid skal tilfredsstille markedsinvestorprinsippet.*' Document No 887522, p. 7.

(46) A total of 16 848 hours yearly is rented under the new lease agreement, compared to 12 500 hours in the past. The new lease agreement represents an increase in the rent per hours from approximately NOK 1 200 to 1 700 (approximately EUR 124 to 176). The reason for this increase is twofold: First, the historical rent paid by the Municipality was set on the basis of the level established in 1989 and 1990, and has not been subject to adjustments. Second, the construction costs associated with providing flexibility and allowing for multisport-use results in the operating costs per square metre exceeding by far the square metre cost of the existing venue.

(47) Both complainants have argued that the rent in the new lease agreement is above market terms, because it is based on TS' needs and not the capacity needed by the Municipality. The complainants allege that the rental fee is not based on arm's length negotiations, but set in order to cover the construction cost of the expansion of Trondheim Spektrum.

(48) One of the complainants has further alleged that the main cost elements of the extension and renovation project is tied to requirements related to activities other than the activities covered by the lease agreements, such as concerts, professional sports events and fairs. One of the complainants claims that the division of costs between the different activities is therefore not correct, as the needs of the sport clubs could have been met with much less costs.

(49) According to the Norwegian authorities, the rent paid to TS by the Municipality under the new lease agreement is market conform, and thus does not entail state aid. Should the Authority be unable to exclude the presence of state aid in the new lease agreement, the Norwegian authorities have notified the lease agreement as compatible aid under Article 61(3)(c) of the EEA Agreement.

4.7. *Measure 6 – capital increase linked to new and unexpected costs – block exemption*

(50) As set out in paragraph (12) above, on 10 December 2018, the Norwegian authorities submitted a GBER information sheet [44], concerning an *ad hoc* aid to TS for an aid amount of NOK 55 million (approximately EUR 5,68 million) in form of a capital increase. The Norwegian authorities have provided the capital increase to TS under Article 55 of the General Block Exemption Regulation ('GBER').

(51) Due, in particular, to an increase in the project scope in 2018, the budget increased to NOK 591 million (approximately EUR 61,05 million). The Norwegian authorities have explained that TS cannot cover the additional costs through its existing means or through additional market financing. It therefore applied for the capital increase on 6 July 2018.

(52) One of the complainants alleges that the capital increase is not compliant with all of the conditions set out in Chapter I of the GBER.

4.8. *Measure 7 – financing of infrastructure costs*

(53) On 14 March 2017, the City Council adopted a zoning plan for the area where TS is located and the surrounding park area. The process was initiated by TS with the aim of expanding the facility into a multi-function facility, feasible for concerts and large sport events, and with increased capacity for sport clubs, trade fairs and congresses.

(54) The City Council adopted the principle of full transfer of expenses in 1993, which sets out that building projects must carry all infrastructure costs that are a consequence of the project. Which costs this principle comprises must be in line with Section 17-3, third paragraph of the Planning and Building Act, which regulates what a development agreement must include [45].

(55) The Norwegian authorities have explained that a zoning plan forms the basis for a project such as the expansion of Trondheim Spektrum [46]. The zoning plan – including use of procedural orders [47] (*rekkefølgekrav*) – does not impose any economic obligations on the developer, but provides for the use of the area relating to the project and indicates what (public) infrastructure needs to be in place prior to the implementation of the project [48].

[44] Case No 82883, GBER 30/2018/Sports.

[45] Document No 874440, p. 20-25. The detailed zoning plan for part of Nidarø was adopted by the City Council on 14 March 2017 in case 25/17.

[46] The Norwegian authorities refer to Section 11 of *lov om planlegging og byggesaksbehandling (plan- og bygningsloven)* LOV-2008-06-27-71.

[47] 'Procedural orders' are requirements relating to the order in which work shall be carried out to ensure the establishment of public services, technical infrastructure and green structures before use is made of areas and the point in time when areas may be used for building and construction purposes, including requirements relating to the order in which development works shall be carried out. See Section 11-9 of the Planning and Building Act, referred to in footnote 46.

[48] The Norwegian authorities refer to section 18 of the Planning and Building Act.

(56) The Planning and Building Act sets limits on the developer's maximum financial contribution to the public infrastructure measures that are required under the zoning regulations. The main criterion for cost allocation under a development agreement is that the measure must have a direct factual relationship with the development; it must be necessary for the implementation of the project. Consequently, only public infrastructure measures that result from the project may potentially be imposed as obligations on the developer. On the other hand, infrastructure works that the Municipality would need to implement also in the absence of the project, cannot be imposed on the developer ([49]).

(57) In addition to the first criterion for cost allocation, the contribution from the developer to the measure must be proportionate to the size and the type of the development or project.

(58) The Norwegian authorities have explained that the Municipality will, for each project, cover the costs of measures that would have to be implemented regardless of the project, but for which the project affects the timing of when the measures are implemented. Such costs relate to infrastructure that is of a general character, benefitting the population as a whole.

(59) The Norwegian authorities have explained that a proportionality assessment must be carried out in each case. The eventual conclusion of a development agreement and the allocation of costs entails a degree of discretion on behalf of the Municipality, which must take into consideration the legal framework, as well as the nature of the project ([50]).

(60) One of the complainants argues that the Municipality has relieved TS from infrastructure costs that a developer would normally have to bear in relation to this type of constructions and has therefore granted an advantage to TS.

(61) The Norwegian authorities have provided information regarding the distribution of the costs between the TS and the Municipality ([51]).

(62) According to the Norwegian authorities, the connection from Nidarø to Ilen Church will be developed. The Norwegian authorities have stated that the measure forms part of what may be described as a recreational area network for the use of the general public and that therefore it cannot legally order the developer to assume the costs in that respect.

(63) The Norwegian authorities have further explained that the upgrade of Klostergata is a direct consequence of the development. However, the Municipality assumes the implementation responsibility and will cover the costs connected to roads and archaeological excavations; TS will pay a contribution of NOK 20 million. This is because the Municipality would in any case need to renew the water and sewage pipes in parts of the street.

(64) The Norwegian authorities have further explained that green areas and a public park will be developed, i.e. a vegetation belt, a park, a walking path and public squares. The Norwegian authorities have stated that this is TS' responsibility. The total amount was estimated at NOK 74 million (approximately EUR 7,64 million), but has been lowered to NOK 39 million (approximately EUR 4,03 million). TS' share of this costs is set at NOK 26 million (approximately EUR 2,66 million), excluding VAT. According to the Norwegian authorities, the calculation of TS' contribution is limited as allowed by Section 17-3, third paragraph of the Planning and Building Act.

(65) In the view of the Norwegian authorities, infrastructure projects financed by the Municipality do not represent financing in violation of the principle of full transfer of costs in light of the modification mandated by Section 17-3, third paragraph of the Planning and Building Act. Furthermore, the Norwegian authorities do not see that the financial contribution by the local authority may be classified as illegal state aid, because the costs could not have been transferred to the developer in any event.

(66) The Norwegian authorities argue that the infrastructure works, to be partly financed by the Municipality, relate to activities that public authorities normally perform in the exercise of their public powers and do not consist in offering goods and services on a market ([52]). According to the Norwegian authorities, the costs assumed by the Municipality do not entail that TS pays less than legally required. Furthermore, the infrastructure is of a general character and will benefit the population as a whole.

([49]) Document No 1059846, p. 2.

([50]) Document No 1059846, p. 2.

([51]) Document No 874440, p. 20 – 25 and Documents No 1059842 to 1059848. The detailed zoning plan for part of Nidarø was adopted by the City Council on 14 March 2017 in case 25/17.

([52]) The Norwegian authorities refer to paragraph 203 of the Authority's Guidelines on the notion of State aid as referred to in Article 61(1) of the EEA Agreement ('NoA'), in this regard and Commission Decision of 8.1.2016. State aid No SA.36019 – Belgium – Financing of road infrastructure in the vicinity of a real estate project – Uplace, paragraph 38.

4.9. *Measure 8 – funds from the Gaming Fund*

(67) The Gaming Fund scheme is administered by Norsk Tipping AS. The funds stemming from Norsk Tipping AS are gaming funds collected, administered and distributed on the basis of the Gaming Act ([53]) that entered into force on 1 January 1993.

(68) Applications for grants from the Gaming Fund scheme are processed and assessed in accordance with the provisions laid down by the Ministry of Culture relating to grants and allocations for sports and physical activities. The goal of the scheme is to facilitate sports and physical activities for everyone.

(69) Funds granted for the construction and renovation of sports facilities will contribute to an infrastructure that provides the population with the opportunity to take part in individually organised activities and activities under the supervision of sport clubs.

(70) As from 1994, TS has received grants from the Gaming Fund Scheme ([54]).

(71) The Norwegian authorities emphasise that the existing Gaming Fund scheme has not been materially altered since it was last assessed by the Authority in the Vålerenga case ([55]) and that the grants in favour of TS have been awarded in accordance with the provisions of the scheme ([56]).

4.10. *Measure 9 – implicit guarantee inherent in a loan agreement between Nordea and TS*

(72) On 11 December 2017, TS signed a loan agreement for NOK 490 million with Nordea ([57]). Nordea will provide the working capital during the construction period. The Norwegian authorities have explained that the Municipality is not a party to the loan agreement nor are there any contractual obligations that require the Municipality to provide financing or capital to TS ([58]).

(73) However, the loan agreement includes the following statements ([59]):

‘Nordea has placed considerable weight on the fact that Trondheim Spektrum AS intends to make structural changes in the company or other measures that increase the possibility that the municipality of Trondheim, without acting contrary to the law, if necessary, can provide a guarantee to Nordea that reduces the risk of cost overruns.’

‘Nordea has also placed great weight on the ownership of Trondheim municipality and the Executive Board’s decision on 25 June 2015 in case 144/14, which states in paragraph two that the municipality of Trondheim, as the majority owner of Trondheim Spektrum, is ready to assume the necessary financial responsibility resulting from the renovation and development of Trondheim Spektrum.’ (Unofficial translation)

(74) These statements relate to a clause in the loan agreement which states under ‘other terms’ ([60]):

‘The risk resulting from any cost overruns occurring during the construction period and, which the credit customer himself cannot pay: Trondheim Spektrum AS will make structural changes in the company or take other measures, which will make it possible for Trondheim Municipality, without coming into conflict with the legislation, if necessary, to provide a guarantee to Nordea.’

([53]) *Lov om pengespill (pengespilloven)* LOV-1992-08-28-103.

([54]) Document No 859501, p. 16.

([55]) The Authority’s Decision No 225/15/COL of 10 June 2015 raising no objections to aid in the form of a transfer of land to Vålerenga Fotball.

([56]) Document No 887522, p. 6.

([57]) Document No 1054294.

([58]) Document No 1054298, p. 6.

([59]) Document No 1054294, Loan Agreement between Nordea and TS, dated 11 December 2017, page 1, paragraphs 5 and 6. Unofficial translation. Norwegian: ‘*Nordea har lagt betydelig vekt på at Trondheim Spektrum AS har til hensikt å gjøre selskapsendringer eller andre tiltak som åpner muligheten for at Trondheim kommune, uten å komme i strid med lovverket, om nødvendig kan stille en garanti overfor Nordea som reduserer risikoen ifm kostnadsoverskridelser.*’/‘*Nordea har for øvrig lagt sterk vekt på eierskapet fra Trondheim kommune og vedtaket i formannskapet datert 25. juni 2014 i sak 144/14, hvor det blant annet fremgår av punkt 2 at Trondheim kommune, som største eier av Trondheim Spektrum AS, er innstilt på å ta det nødvendige økonomiske ansvaret som følger av rehabilitering og utvikling av Trondheim Spektrum.*’

([60]) Document No 1054294, Loan Agreement between Nordea and TS, dated 11 December 2017, p. 5, ‘Other terms’ – bullet point 3. Unofficial translation. Norwegian: ‘*Risikoen som følge av at det oppstår kostnadsoverskridelser i byggeperioden og kredittkunden selv ikke kan betale disse: Trondheim Spektrum AS vil gjøre selskapsendringer eller andre tiltak som åpner muligheten for at Trondheim kommune, uten å komme i strid med lovverket, om nødvending kan stille garanti overfor Nordea.*’

(75) Under the same heading, the following clause states ([61]):

'The lease agreement with Trondheim Municipality of 26.10.2017 cannot be changed/reduced without Nordea's prior written consent.'

(76) Finally, under the heading 'Change of ownership – mandatory early repayment' ([62]) the loan agreement states ([63]):

'It is a condition for entering into and maintaining the Construction Loan Agreement that Trondheim Municipality owns at least 77,93 % of the credit customer and maintains its ownership unchanged.

In the event that the ownership composition changes, without Nordea's prior written consent, the Construction Loan and any outstanding amount shall be repaid as specified in clause 11 (early maturity of the construction loan).'

(77) TS and Nordea had previously signed a loan agreement dated 27 July 2017. The agreement contained a condition that any construction cost excess during the construction period should be covered either by TS or the Municipality. The loan agreement was co-signed by the City Executive of Finance. That agreement therefore contained clauses regarding the Municipality's responsibility in respect of any project overruns as well as obligations in respect of the lease agreement which at that time had not been finalised ([64]).

(78) The co-signing of the loan agreement was later deemed a municipal guarantee pursuant to section 51 of the Municipality Act. The City concluded that the guarantee, in order to be effective, required state approval. The guarantee would, for various reasons, probably not obtain such approval and therefore the Chief City Executive was advised to promptly inform Nordea that the Municipality could not be party to the loan agreement. This agreement is void and does not apply between the parties. TS and Nordea therefore signed the current loan agreement without the official involvement of the Municipality.

5. The presence of state aid

5.1. *Introduction – existing vs. new aid*

(79) As set out above, several alleged aid measures granted to TS are at stake. However, in the present decision the Authority will not assess further the nature of potential aid measures, which would constitute existing aid – either individual aid or aid schemes – within the meaning of Article 1(b) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('Protocol 3 SCA').

(80) Existing aid is subject to a different procedural framework compare to new aid ([65]). Furthermore, existing aid measures are not subject to a repayment obligation.

5.1.1. *Measure 1 – the municipal loan*

(81) The municipal loan was granted to TS in 1992. In case 113/92 ([66]), the City Council adopted a decision to issue bonds to enable TS, through a new loan, to pay off its existing loans. The Authority therefore considers that any aid entailed in the municipal loan would be individual aid awarded to TS ([67]). The terms of the loans were modified in 2004.

(82) According to Article 15(1) of Part II of Protocol 3 SCA, the powers of the Authority to recover aid shall be subject to a limitation period of 10 years. According to Article 15(3) of Part II of Protocol 3 SCA, any aid with regard to which the limitation period has expired, shall be deemed to be existing aid ([68]).

([61]) Document No 1054294, Loan Agreement between Nordea and TS, dated 11 December 2017, p. 5, 'Other terms' – bullet point 4. Unofficial translation. Norwegian: '*Leieavtalen med Trondheim kommunea av 26.10.2017 kan ikke endres/reduseres uten Nordea forutgående skriftlige samtykke.*'

([62]) Norwegian: '*eierskifte – obligatorisk førtidig tilbakebetaling*'.

([63]) Document No 1054294, Loan Agreement between Nordea and TS, dated 11 December 2017, p. 4. Unofficial translation. Norwegian: '*Det er et vilkår for inngåelse og opprettholdelse av Byggekredittavtalen, at Trondheim Kommune eier minst 77,93 % av Kredittkunden, og opprettholder sin eierandel uendret. For det tilfellet at eiersammensetningen endres, uten Nordeas forutgående skriftlige samtykke, skal Byggekreditten og ethvert utestående tilbakebetales som angitt i klausul 11 (Førtidig forfall av byggekreditten).*'

([64]) Document No 1054298, p. 5.

([65]) Within the meaning of Article 1(c) of Part II of Protocol 3 SCA.

([66]) Documents No 859501, p. 13, and 859503, p. 76.

([67]) According to Article 1(e) of Part II of Protocol 3 SCA, '"individual aid" shall mean aid that is not awarded on the basis of an aid scheme and notifiable awards of aid on the basis of an aid scheme'.

([68]) See also Article 1(b)(iv) of Part II of Protocol 3 SCA, according to which 'existing aid' is 'aid which is deemed to be existing aid pursuant to Article 15 of this Chapter'.

(83) The limitation period begins on the day on which the unlawful aid is awarded to the beneficiary either as individual aid or as aid under an aid scheme ([69]).

(84) As the municipal loan was granted to TS in 1992, the limitation period has expired. This would be the case even if the limitation period were to be calculated from the date of the last modification of the loan in 2004. Further, the loan was fully repaid in 2014. Any potential aid granted through the measure shall therefore be deemed to be existing aid. Moreover, as the loan was granted to TS in 1992, it would also be aid, which existed before the entry into force of the EEA Agreement and is still applicable after the entry into force of the EEA Agreement. Any potential aid granted through the measure would therefore also be existing aid within the meaning of Article 1(b)(i) of Part II of Protocol 3 SCA.

5.1.2. *Measure 2 – the municipal guarantee*

(85) The Authority considers that any aid inherent in the guarantee would be individual aid awarded to TS. The Municipality granted the guarantee to TS in 1999 for TS to secure a loan(s) from Nordea. The guarantee was, according to the information provided by the Norwegian authorities, used in 2000 and 2001. The purpose of the loan was to finance the construction of hall F. The guarantee is still in effect and expires in 2031.

(86) As the municipal guarantee was awarded to TS in 1999, the limitation period of 10 years under Article 15(1) of Part II of Protocol 3 SCA has expired ([70]). According to Article 15(3) of Part II of Protocol 3 SCA any potential aid granted through the measure shall therefore be deemed to be existing aid.

5.1.3. *Measure 3 – the leasehold agreements*

(87) The leasehold agreements were concluded in 1980 and 1989 respectively. The leasehold agreement between Trondheim commune and Nidarøhallen A/S (now TS) was concluded in 1989 for a duration of 50 years. In 1980, the Municipality entered into a 40-year leasehold agreement with Trondheim Tennisklubb. Trondheim Tennisklubb financed and constructed Hall G of Trondheim Spektrum. The ownership of Hall G, including the leasehold, was transferred to Nidarøhallen A/S (now TS) in 1991 ([71]).

(88) The Authority considers that any aid granted through these leasehold agreements, including their later use as a collateral, would constitute individual aid, which existed prior to the entry into force of the EEA Agreement. According to Article 1(b)(i) of Part II of Protocol 3 SCA, the measures would therefore constitute existing aid.

5.1.4. *Conclusion – measures 1, 2 and 3*

(89) As any potential state aid granted through measures 1, 2 and 3 would seem to constitute existing aid, within the meaning of Article 1(b) of Part II of Protocol 3 SCA, the Authority will not further assess the state aid character of these measures in the present decision.

5.1.5. *Measure 8 – aid granted under the Gaming Fund scheme*

(90) The funds stemming from Norsk Tipping AS are gaming funds collected, administered and distributed on the basis of the Gaming Act 1992 that entered into force on 1 January 1993, before the entry into force of the EEA Agreement.

(91) The Authority considered in its Decision No 537/09/COL of 16 December 2009 ([72]) that the activities of Norsk Tipping AS constituted an existing aid scheme. The Norwegian authorities have confirmed that no amendments have been made to the scheme since that time. The Authority considers that the funds granted to TS from Norsk Tipping AS are an application of an existing aid system. Existing aid also covers individual aid awards, which have been granted on the basis of an existing aid scheme ([73]). Therefore, the Authority will not further assess the aid character of the measure in this decision. However, the Authority will take into account the contribution from the gaming funds in any compatibility assessment it may carry out in relation to the measures included in the scope of this decision.

([69]) Article 15(2) of Part II of Protocol 3 SCA.

([70]) This would be the case even if the limitation period would be calculated form the date of when the guarantee was last used in 2001.

([71]) Document No 887522, p. 5.

([72]) Available at http://www.eftasurv.int/media/decisions/537-09-COL.pdf. Further, see the Authority's Decision No 225/15/COL of 10 June 2015 raising no objections to aid in the form of a transfer of land to Vålerenga Fotball, paragraph 57.

([73]) Case E-14/10 *Konkurrenten.no AS* v *ESA* [2011] EFTA Ct. Rep. 266, paragraph 53.

5.1.6. *Measure 4 – lease agreements concluded from 1999 to 2017*

5.1.6.1. Introduction

(92) The Norwegian authorities have argued that, should the Authority entertain any doubts concerning potential advantages in the lease agreements, the lease agreements concluded from 1999 to 2017 should be considered to form part of an existing aid scheme that predates the EEA Agreement. The Norwegian authorities have stated that the Municipality leased the facilities since its opening in 1963. However, the lease agreements were never formalised before 1995 [74].

(93) One of the complainants has argued that the lease agreements cannot be considered to form part of an existing aid scheme. The complainant refers to the fact that there is no law or regulation that obliges the Municipality to lease facilities for sports. According to the complainant, the recent municipal decision regarding the new and twice as high lease, illustrates the margin of discretion inherent in the conclusion of a new lease agreement. In any case, the new lease would have represented a significant amendment to the aid scheme as it entails twice as much aid as before. The complainant did not elaborate further on this issue since, in its view, the financing of the operation of the premises cannot constitute an existing aid scheme in the first place [75].

(94) The Authority takes the preliminary view that the lease agreements concluded from 1999 to 2017 do not constitute an aid scheme, for the following reasons.

(95) Article 1(d) of Part II of Protocol 3 SCA sets out two definitions of an aid scheme:

'"aid scheme" shall mean any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount'. (emphasis added)

(96) The presence of an aid scheme can be based on either of those two definitions.

5.1.6.2. The first definition under Article 1(d) of Part II of Protocol 3 SCA

(97) The first definition has three cumulative criteria, defining an aid scheme as (i) any act on the basis of which aid can be awarded, (ii) which does not require any further implementing measures, and (iii) which defines the potential aid beneficiaries in a general and abstract manner.

(98) The Norwegian authorities first note that the main purpose underlying the construction and ongoing extension of Trondheim Spektrum was to create facilities that the municipality, or more precisely, the local Sports Council, would then distribute among the sport clubs. If not used by the sport clubs, Trondheim Spektrum's facilities would remain unused throughout most of the year. At the same time, it would be inconceivable for TS to run a balanced budget without receiving the lease income from the Municipality, which acquires this capacity for the sole purpose of providing its citizens with free access to sports and leisure activities.

(99) The Norwegian authorities have referred to an administrative practice and the principles underlying the lease agreements, which have remained unaltered since the entry into force of the EEA Agreement. Those are the leasing of, in principle, all of Trondheim Spektrum's suitable capacity during 8 months of the year, the possibility for TS to offer some of this capacity on the market for third parties and at a price that is periodically adjusted to reflect, in particular, extensions of Trondheim Spektrum's capacity.

(100) In the view of the Norwegian authorities, this mechanism, even if not strictly legally binding, could be regarded as an 'act' which also defines the potential aid beneficiary, as required by Article 1(d) of Part II of Protocol 3 SCA [76].

(101) The Norwegian authorities have argued that while the Municipality negotiates the new lease contracts with TS upon expiry of the previous one, it could not deviate from the mechanism without endangering its capacity to deliver sports and leisure possibilities to its citizens. As a result, there have only been minor adaptations to the lease agreements over the years. Notwithstanding the fact that the lease agreement falls – through its responsibility for the annual budget – under the oversight of the City Council, the possible modifications are rather of a 'technical application' based on the principles of the act, and do not, in the view of the Norwegian authorities, convey sufficient discretion upon the Municipality to be considered as implementing measures [77].

(74) Document No 859501, p. 23.
(75) Document No 868182, p. 4.
(76) Document No 859501, p. 24.
(77) The Norwegian authorities refer to the Authority's Decision No 519/12/COL of 19 December 2012 closing the formal investigation procedure into potential aid to AS Oslo Sporveier and AS Sporveisbussene, paragraph 180.

(102) As the Norwegian authorities have stated, existing 'aid schemes' have been held to encompass non-statutory customary law ([78]) and administrative practice related to the application of statutory ([79]) and non-statutory law ([80]). In one case, the Commission found that an aid scheme relating to *Anstaltslast and Gewährträgerhaftung* was based on the combination of an unwritten old legal principle combined with widespread practice across Germany ([81]).

(103) In a recent judgment, the General Court made the following observations on the basis of the definition of an aid scheme in Article 1(d) of Regulation (EC) No 2015/1589 ([82]), as interpreted by case-law ([83]):

'First, if individual aid awards are made without further implementing measures being adopted, the essential elements of the aid scheme in question must necessarily emerge from the provisions identified as the basis for the scheme.

Secondly, where the national authorities apply that scheme, those authorities cannot have any margin of discretion as regards the determination of the essential elements of the aid in question and whether it should be awarded. For the existence of such implementing measures to be precluded, the national authorities' power should be limited to the technical application of the provisions that allegedly constitute the scheme in question, if necessary after verifying that the applications meet the pre-conditions for benefiting from that scheme.

Thirdly, it follows from Article 1(d) of Regulation (EC) No 2015/1589 that the acts on which the aid scheme is based must define the beneficiaries in a general and abstract manner, even if the aid granted to them remains indefinite.'

(104) In the case at hand, there is no legal obligation on the Municipality to enter into a lease agreement with TS. Nor is there any legislation which provides the framework under which the lease agreements are made. Furthermore, it appears that the Municipality has, at least on some occasions, decided unilaterally how much rent it pays to TS under the lease agreements ([84]). The complainants allege that the rent has never been based on arm's length negotiations but decided unilaterally by the Municipal Board of the Municipality.

(105) The alleged aid measure in question is the rent paid above market terms to TS under the lease agreement. If the Municipality can decide unilaterally the level of the rent, then that affords it the discretion to decide whether to grant TS the alleged aid or not, as well as the amount of the alleged aid.

(106) It thus appears to the Authority, based on the information provided by the Norwegian authorities so far, that the administrative practice and the principles referred to by the Norwegian authorities do not constitute an 'act on the basis of which aid can be awarded'. Moreover, it appears to the Authority that the Municipality enjoys discretion when entering into the lease agreements with TS, so that it can determine the essential elements of the potential aid in question. Should that be the case, the second criterion and the first criterion of the first definition under Article 1(d) of Part II of Protocol 3 SCA would not be fulfilled.

(107) Finally, the Norwegian authorities have not explained how the third criterion could be fulfilled by the principles and administrative practice in question.

(108) As all conditions of the first definition must be cumulatively fulfilled, the Authority takes the preliminary view that the lease agreements concluded from 1999 to 2017 do not constitute an aid scheme.

5.1.6.3. The second definition under Article 1(d) of Part II of Protocol 3 SCA

(109) The second definition has three cumulative criteria, defining an aid scheme as (i) any act on the basis of which aid which is not linked to a specific project (ii) may be awarded to one or several undertakings (iii) for an indefinite period of time and/or for an indefinite amount.

([78]) See the Authority's Decision No 405/08/COL of 27 June 2008 closing the formal investigation procedure with regard to the Icelandic Housing Financing Fund, section II.2.3.1.

([79]) See Commission Decision No E-45/2000 Fiscal exemption in favour of Schiphol Group (OJ C 37, 11.2.2004, p. 13).

([80]) The Authority's Decision No 491/09/COL of 2 December 2009 Norsk Film group, Chapter II.2 p. 8. See also the Authority's Decision No 075/16/COL of 20 April 2016 to propose appropriate measures regarding the use of publicly owned land and natural resources by electricity producers in Iceland, paragraph 114, and Decision No 519/12/COL of 19 December 2012 closing the formal investigation into potential aid to AS Oslo Sporveier and AS Sporveisbussene.

([81]) See Commission Decision No E-10/2000 State guarantees for public banks in Germany (OJ C 150 22.6.2002, p. 7).

([82]) Article 1(d) of Regulation (EC) No 2015/1589 corresponds to Article 1(d) of Part II of Protocol 3 SCA.

([83]) Judgment in *Belgium* v *Commission*, T-131/16 and T-263/16, EU:T:2019:91, paragraphs 85–88.

([84]) Document No 874440, p. 8.

(110) The Norwegian authorities have not argued that the alleged aid scheme falls within the second definition of Article 1(d) of Part II of Protocol 3 SCA. The Authority therefore lacks information to assess this.

(111) However, the Authority notes that in line with the administrative practice and principles referred to by the Norwegian authorities, the lease agreements have been concluded for a specific time period and expire at a certain date. Moreover, the lease agreements set out the rental price for the facilities rented to the Municipality. It therefore appears to the Authority that the third condition would not be fulfilled.

(112) As all conditions of the second definition must be fulfilled cumulatively, the Authority takes the preliminary view that the lease agreements concluded from 1999 to 2017 do not constitute an aid scheme.

5.1.6.4. Limitation period

(113) Pursuant to Article 15(1) of Part II of Protocol 3 SCA, the powers of the Authority to recover aid are subject to a limitation period of 10 years. The limitation period shall begin on the day on which the unlawful aid is awarded to the beneficiary either as individual aid or as aid under an aid scheme. Any action taken by the Authority, with regard to the unlawful aid shall interrupt the limitation period ([85]).

(114) In this decision, the Authority will only further assess the potential aid character of the lease agreements for which the limitation period has not expired.

(115) The General Court has confirmed that a request for information constitutes a measure interrupting the 10-year limitation period ([86]). Furthermore, the General Court stated, in relation to an information request from the Commission that: 'When it addresses a request for information to a Member State, the Commission is informing that State that it has in its possession information concerning aid alleged to be unlawful and, if necessary, that that aid will have to be repaid. Accordingly, the simplicity of the request for information does not have the consequence of depriving it of legal effect as a measure capable of interrupting the limitation period' ([87]).

(116) By letter dated 27 March 2017, the Authority sent the first complaint in the case to the Norwegian authorities and invited them to comment on the complaint ([88]). By that letter, the Authority informed the Norwegian authorities that it had in its possession information concerning alleged unlawful state aid and invited them to provide their comments. The Authority therefore considers that by sending the first complaint to the Norwegian authorities, it took action within the meaning of Article 15(2) of Part II of Protocol 3 SCA, and therefore interrupted the limitation period on 27 March 2017.

(117) Accordingly, the lease agreements for which the limitation period has not expired, would appear to be following:

(a) Lease agreement 2007 – 2008;

(b) Lease agreement 2009 – 2010; and

(c) Lease agreement 2011 (which has been renewed annually).

(118) This is because it would seem from the information provided by the Norwegian authorities that the lease agreement entered into force on 1 January 2008 ([89]), which in the absence of any indication to the contrary should be taken as the day any aid was granted under the agreement. However, it appears that the lease agreement listed by the Norwegian authorities, as preceding the 2007 – 2008 lease agreement expired on 31 December 2006. The Authority thus lacks information regarding the lease agreement in force during the year 2007. Moreover, the Authority does not have information on when the lease agreement of 2007 – 2008 was signed, and on whether the date of signing could be the date that any aid was granted under the agreement.

(119) The Authority invites the Norwegian authorities to submit further information in this regard.

([85]) Article 15(2) of Part II of Protocol 3 SCA.

([86]) See judgment in *Scott* v *Commission*, T-366/00, EU:T:2003:113, paragraph 60: 'It follows that the mere fact that the applicant was not aware of the existence of the Commission's request for information from the French authorities beginning on 17 January 1997 […] does not have the effect of depriving them of legal effect *vis-á-vis* the applicant. Consequently, the letter of 17 January 1997, sent by the Commission before the initiation of the administrative procedure and requesting further information from the French authorities, constitutes, under Article 15 of Regulation (EC) No 659/1999, a measure interrupting the 10-year limitation period'. Article 15 of Council Regulation (EC) No 659/1999 of 22 March laying down detailed rules for the application of Article 93 of the EC Treaty (no longer in force) corresponds to Article 15 of Part II of Protocol 3 SCA.

([87]) Judgment in *Département du Loiret* v *Commission*, T-369/00, EU:T:2003:114, paragraphs 81 and 82.

([88]) Document No 849708.

([89]) Exhibit Q to Document No 859501.

5.1.7. *Conclusion – new vs. existing aid*

(120) In light of the above findings, the Authority's further assessment in this decision is limited to potential new aid entailed in measures 4 to 7 and 9, which all post-date the entering into force of the EEA Agreement and where the limitation period has not expired: That is, the lease agreements concluded from 2007 to 2017 (measure 4), the new lease agreement of 2019 (measure 5), the capital increase related to new and unexpected costs (measure 6), the financing of infrastructure costs (measure 7) and the implicit guarantee inherent in the loan agreement between TS and Nordea (measure 9).

5.2. ***The concept of state aid***

(121) 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.'

(122) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: the measure must (i) be granted by the State or through state resources; (ii) confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) be liable to distort competition and affect trade.

5.3. ***State resources***

(123) Only advantages granted directly or indirectly through state resources can constitute state aid within the meaning of Article 61(1) of the EEA Agreement. State resources include all resources of the public sector, including municipalities ([90]).

(124) The transfer of state resources may take many forms, such as direct grants, loans, guarantees, direct investment in the capital of companies, and benefits in kind. A firm and concrete commitment to make state resources available at a later point in time is also considered a transfer of state resources. A positive transfer of funds does not have to occur; foregoing state revenue is sufficient. Waiving revenue which would otherwise have been paid to the State constitutes a transfer of state resources ([91]).

(125) Measures 4 to 7 and 9 were granted by the Municipality in the form of payments under lease agreements, a capital increase, the reduction of infrastructure costs allegedly borne by a developer and as a potential implicit guarantee inherent in a loan agreement between TS and Nordea. Consequently, the measures entail the transfer of state resources.

5.4. ***Advantage***

5.4.1. *Introduction*

(126) The qualification of a measure as state aid requires that it confers an advantage on the recipient. An advantage, within the meaning of Article 61(1) of the EEA Agreement, is any economic benefit, which an undertaking could not have obtained under normal market conditions.

5.4.2. *Measure 4 – the lease agreements concluded from 2007 to 2017*

(127) The Norwegian authorities have argued that the lease agreements concluded from 2007 to 2017 are market conform and therefore do not entail an advantage within the meaning of Article 61(1) of the EEA Agreement. The Norwegian authorities have not, however, put forward further arguments to the effect that the Municipality acted as a market investor, when entering into the lease agreement with TS.

(128) The EEA legal order is neutral with regard to the system of property ownership and does not in any way prejudice the right of EEA States to act as economic operators. However, when public authorities directly or indirectly carry out economic transactions in any form, they are subject to EEA State aid rules. Economic transactions carried out by public bodies (including public undertakings) do not confer an advantage on its counterpart, and therefore do not constitute aid, if they are carried out in line with normal market conditions ([92]).

([90]) Judgment in *Germany* v *Commission*, C-248/84, EU:C:1987:437, and NoA, paragraph 48.
([91]) Judgment in *France* v *Ladbroke Racing Ltd and Commission*, C-83/98 P, EU:C:2000:248, paragraphs 48 – 51.
([92]) NoA, p. 73 and 74.

(129) The Norwegian authorities have noted that given the different sizes, equipment, design and location of other venues in Norway, it is not possible to identify a fully equivalent venue to Trondheim Spektrum ([93]). However, the Norwegian authorities have provided information to support its argument that the lease agreements have been market confirm.

(130) The Municipality has provided information on how TS' pricing to third parties compares to other venues and information on prices for leasing hall capacity for sports and leisure purposes in other venues.

(131) The Norwegian authorities have explained that Trondheim Spektrum disposes of two halls larger than 2 000 m² (Hall D and Hall F), which are particularly suited for larger fairs, concerts, conferences and similar events. Depending on the type of event, TS charges approximately NOK 70 000 to NOK 85 000 per day for the larger hall D (approximately EUR 7 230 – 8 780), and NOK 59 000 to NOK 70 000 for the somewhat smaller hall F (approximately EUR 6 100 – 7 230).

(132) The Norwegian authorities made a comparison with leasing such facilities in other venues in Trondheim. The freemasons lodge in Trondheim, for example, charges a daily rate of only NOK 15 000 to NOK 18 000 (approximately EUR 1 550 – 1 860). This is a somewhat smaller venue, it can accommodate up to 600 persons, whereas Hall F in Trondheim Spektrum has a capacity of more than 1 000 persons.

(133) According to the Norwegian authorities, venues located in Norwegian cities of comparable sizes charge similar rates. In Stavanger, renting of capacity similar to that of Hall F costs just above NOK 200 000 for four days, whereas Grieghallen in Bergen charges approximately NOK 300 000 for four days (approximately EUR 20 100 and 31 000). TS' prices lie just below Bergen ([94]).

(134) The Norwegian authorities have further referred to Sotra Arena located in the municipality of Fjell, a 25 minutes drive from the city of Bergen, a venue with 12 000 m² indoor capacity. In 2016, this venue was used for trade fairs charging approximately NOK 100 000 to 125 000 for three days (approximately EUR 10 300 – 12 900) for approximately 5 000 to 7 000 m².

(135) In view of this comparison, the Norwegian authorities state that it would appear that TS' prices for hall capacity, when rented out to third parties, are in line with market prices.

(136) The Municipality purchases capacity from TS, sports clubs with own facilities, other state authorities (in buildings such as high-schools) and to a very limited degree, from private facilities.

(137) The hourly rate paid by the Municipality ranges between NOK 350 and 2 046 per hour (approximately EUR 36 and 211). The hourly rate paid to TS is NOK 1 174 (approximately EUR 121) ([95]). The Norwegian authorities note that the difference in the prices can be explained by a variety of factors. Also, a number of these venues have been financed (partly) by the State and are contractually bound to provide (some) capacity at fixed rates.

(138) Other factors, which may explain the relatively large differences in prices, are that not all daytimes are similarly valuable and not all venues are as modern, well equipped and centrally located as Trondheim Spektrum. The Norwegian authorities have explained that all of the foregoing considerations are reasons why some of the capacity that the Municipality purchases from other venues is comparatively cheap ([96]).

(139) The Norwegian authorities provided examples of the rates charged by Vestlandshallen, a sports centre in Bergen. According to the Norwegian authorities, this venue charges approximately the same price to (non-sport club) users as the Municipality pays to TS. This is based on a calculation whereby one of TS' 'hall hours' is for a surface area of 800 m² and comprises 60 minutes. A 'quarter hall' in Vestlandshallen would be approximately 440 m² and cost NOK 940 for 90 minutes (approximately EUR 97). This would result in a theoretical price of approximately NOK 626 for 60 minutes and hence NOK 1 252 for a slightly larger surface area than the equivalent in TS (approximately EUR 65 and 129).

(140) Moreover, the Norwegian authorities argue that the City of Bergen charges non-preferential users NOK 1 150 for one hour in Haukelandshallen, a venue comparable to Trondheim Spektrum (approximately EUR 119). Furthermore, the City of Tromsø charges up to NOK 1 940 for one hour of similar surface area in Tromsøhallen (approximately EUR 200).

([93]) Document 859501, p. 17.
([94]) Document No 859501, p. 17–18. The Norwegian authorities have further referred to a management interview with Trondheim Messeselskap AS, a company that organizes fairs all over Norway in which the Municipality was informed that Trondheim Spektrum is not perceived as a particularly cheap location. The Norwegian authorities have referred to this interview for further details on price comparison.
([95]) Presumably by dividing the total price paid by number of hours, 14 679 522/12 500 = 1174.36.
([96]) Document No 859501, p. 18.

(141) The Authority notes that these prices appear to be charged for specific events whereas the assessment in the case at hand concerns an agreed price for a large amount of capacity over a long period of time.

(142) Furthermore, as noted by the Norwegian authorities, there are important differences when it comes to comparing these venues, for example in the rental time ([97]), the quality of the facilities and the location of the venues within (or outside) the cities. In light of this, the Authority is not convinced that these examples submitted by the Norwegian authorities provide a sufficient degree of comparability to be able to establish that the lease agreements have conformed to market terms.

(143) In order to establish whether a transaction conforms to market conditions, the transaction can be assessed in the light of the terms under which comparable transactions carried out by comparable private operators have taken place in comparable situations ([98]).

(144) Benchmarking may not be an appropriate method to establish market prices if the available benchmarks have not been defined with regard to market considerations or if the existing prices are significantly distorted by public interventions ([99]).

(145) Finally, there are other indications that the lease agreements have not been entered into on market terms, indicating a need for further assessment.

(146) First, the Norwegian authorities have explained that, in the past, the rent in the lease agreements has been set, inter alia, on the basis of TS' cost structure, with a focus on putting TS in a position to pay off its loans and continue operations.

(147) Second, in the past, there are examples where the rent has been reduced unilaterally by the Municipality, due to reasons unrelated to the use of the facilities ([100]).

(148) Third, the Norwegian authorities have explained that the lease agreements have provided that TS can reclaim up to 2 000 hours annually under the lease agreements. TS can therefore use the facilities, which are otherwise reserved under the lease agreements for other purposes, for those specific hours. The Norwegian authorities have explained that TS has reclaimed 945 – 2 173 hours annually from 2010 to 2017 and that there is no mechanism for the reduction of the overall rent when TS reclaims rented hours. However, the Norwegian authorities have explained that these are hours which the Municipality for distribution purposes gains access to, but never pays for ([101]).

(149) In the light of the aforementioned considerations, the Authority takes the preliminary view that the lease agreements from 2007 to 2017 may have granted TS an advantage.

5.4.3. *Measure 5 – the lease agreement of 2019*

(150) The Norwegian authorities have argued that the lease agreement of 2019 is market conform and therefore does not constitute an advantage in favour of TS. The Norwegian authorities have not presented arguments stating that the Municipality acted as a market investor when entering into the new lease agreement with TS.

(151) The new lease agreement represents an increase in the rent per hour from approximately NOK 1 200 to NOK 1 700 (approximately EUR 124 to 176) ([102]). The Norwegian authorities have acknowledged that this is at the upper end of the hourly rates they have provided (hourly rates from a sample of sports facilities range from approximately NOK 350 to NOK 2 046 (approximately EUR 36 to 211)) ([103]).

(152) Trondheim Spektrum will be, following the upgrade, a modern and very centrally located facility in one of Norway's largest and fastest growing cities. In the Norwegian authorities' view, for the Authority to conclude that the lease agreement does entail an advantage, the hourly rate would have to be well above the price ranges observed in the market ([104]).

([97]) As explained by the Norwegian authorities, not all daytimes are equally valuable.

([98]) NoA, paragraph 98.

([99]) NoA, paragraph 99.

([100]) Document No 874440, p. 8. In 1994, the rent was reduced by NOK 2 million unilaterally by the City Council. The reason behind this was threefold; (i) overall economic downturn demanding overall cuts in the city budget, (ii) the City Council was focusing on elderly care, and (iii) after refinancing in 1992, TS had reduced their cost of loan-capital and was deemed able to withstand such a cut.

([101]) Document No 896727, p. 6.

([102]) Numbers from 2017.

([103]) See section 5.4.2 of this decision.

([104]) Document No 1040641, p. 9.

(153) The Norwegian authorities have further stated that the hourly rate for commercial users of Trondheim Spektrum was higher in the past (from NOK 1 000 to 1 800; approximately EUR 103 to 186) than under the municipal lease contract (NOK 1 200; approximately EUR 124). This is also expected to remain the case going forward, with an hourly rate of approximately NOK 1 700 under the new lease agreement (approximately EUR 176).

(154) Consequently, if it were concluded that the Municipality paid a price above market levels, this would necessarily entail that the commercial users of TS would also do that. In the Norwegian authorities' view, there is no reason to assume that commercial users would pay a price above market level for the renting of hall space in Trondheim Spektrum ([105]).

(155) The Authority acknowledges that the benchmarks provided by the Norwegian authorities do enable some degree of comparison. However, as the Authority noted with regard to the lease agreements concluded from 1999 to 2017, the lease agreement concerns an annually agreed price for a large amount of capacity, whereas the hourly rates provided for other venues appear to concern situations where the venue is rented for a limited period.

(156) Furthermore, as noted by the Norwegian authorities, the comparison entails important differences, for example in the rental time, the quality of the facilities, and the location of the venues within the cities. The Authority therefore has doubts as to whether the benchmarks provided by the Norwegian authorities can establish that the lease agreement of 2019 conforms to market terms.

(157) The Authority therefore does not share the Norwegian authorities' view that the hourly rates observed in the market, as described by the Norwegian authorities, are sufficient at this stage, in order to exclude that the lease agreement entails an advantage to TS.

(158) The Authority accordingly draws the preliminary conclusion that the lease agreement of 2019 concluded in 2017 may have granted an advantage to TS.

5.4.4. *Measure 6 – capital increase linked to new and unexpected costs – GBER*

(159) The Norwegian authorities have granted *ad hoc* aid to TS in the form of a capital increase for an amount of NOK 55 million (approximately EUR 5,68 million) under Article 55 GBER. The Norwegian authorities have not argued that TS could have obtained the capital increase under normal market conditions. The Norwegian authorities have explained that TS cannot cover these additional costs through its existing means or through additional market financing.

(160) Accordingly, the Authority finds that the capital increase constitutes an advantage to TS, corresponding to the full amount of the capital increase.

5.4.5. *Measure 7 – financing of infrastructure costs*

(161) The precise form of the measure is irrelevant in establishing whether it confers an economic advantage on the undertaking. Not only the granting of positive economic advantages is relevant for the notion of state aid, also relief from economic burdens can constitute an advantage. The latter is a broad category, which comprises any mitigation of charges normally included in the budget of an undertaking. This covers all situations in which economic operators are relieved of the inherent costs of their economic activities ([106]).

(162) The notion of an advantage also covers situations where operators do not have to bear costs that other comparable operators normally do under a given legal order, regardless of the non-economic nature of the activity to which the costs relate ([107]).

(163) The Norwegian authorities have provided information relating to the infrastructure costs of the expansion and development of TS as described in section 4.8.

(164) The Norwegian authorities have explained that the infrastructure improvements that are (partly) financed by the Municipality relate to measures that the Municipality would have to implement, but the project affects the timing for when the measures are implemented. Further, the Norwegian authorities have stated that it would be disproportionate to require the developer to bear these costs and would thus be contrary to Section 17-3(3) of the Planning and Building Act ([108]). Moreover, they have stated that this approach is consistent with the Municipality's practice in other comparable projects ([109]).

([105]) Document Nos 1040641, p. 10, and 1054298, p. 5.
([106]) NoA, paragraph 68.
([107]) NoA, paragraph 68.
([108]) *Lov om planlegging og byggesaksbehandling (plan- og bygningsloven)* LOV-2008-06-27-71, available at https://lovdata.no/dokument/NL/lov/2008-06-27-71.
([109]) Document No 1059170.

(165) The Norwegian authorities have explained that in order to ensure proportionality of the cost allocation, the total costs that the developer must bear are benchmarked against other projects and practice (cost of contribution to public infrastructure per m² BRA ([110])). For a typical housing development, which tends to be a highly profitable development, experience shows that an acceptable expense per m² BRA is around NOK 2 000 (approximately EUR 207). In TS' case, there is a cost of NOK 2 081 per m² BRA (approximately EUR 215).

(166) However, the Norwegian authorities have not provided information underlying the calculations of the division of costs and have not specified whether these calculations are based on objective criteria. The benchmark used by the Norwegian authorities does not provide full comparability as it refers to a different type of project, that is, a housing development, whereas the case at hand concerns a multifunctional infrastructure. Furthermore, it is not clear how this benchmark has been applied to other projects. The Authority therefore sees a need for a further assessment of the practice of calculating costs for these types of projects. Consequently, the Authority cannot, at this point, exclude the existence of an advantage, within the meaning of Article 61(1) of the EEA Agreement.

(167) The Authority thus draws the preliminary conclusion that the division and calculation of infrastructure costs, with regard to the renovation and extension of TS, may have granted TS an advantage.

5.4.6. *Measure 9 – implicit guarantee inherent in a loan agreement between Nordea and TS*

(168) On 11 December 2017, TS signed a loan agreement for NOK 490 million (approximately EUR 50,67 million) with Nordea ([111]). Nordea will provide the working capital during the construction period. The Norwegian authorities have explained that the Municipality is not a party to the loan agreement, nor are there any contractual obligations that require the municipality to provide financing or capital to TS ([112]).

(169) One of the complainants has alleged that the Municipality has granted state aid to TS through the loan with Nordea, in the form of a guarantee.

(170) As described in section 4.10, the loan agreement contains clauses, which mention the possibility for the Municipality, without acting contrary to the legislation, if necessary, to issue a guarantee for Nordea, in relation to the risk which follows any cost overruns in the construction period ([113]).

(171) The loan agreement further contains clauses, which state that the lease agreement between TS and the Municipality cannot be changed, without Nordea's prior written approval ([114]). Furthermore, the loan agreement contains a condition that the Municipality owns at least 77,93 % of TS ([115]).

(172) The Norwegian authorities have emphasised that the Municipality is not a party to the loan agreement and that it is Nordea that takes into account certain factual circumstances in its risk assessment and that these clauses and statements do not bind the Municipality. More specifically, the Norwegian authorities have stated that the potential structural changes in the company and potential political guidelines do not constitute a firm and concrete legal obligation that could bind the Municipality.

(173) Similarly, the Norwegian authorities have argued that the section in the loan agreement that states that the lease agreement with the Municipality cannot be changed without Nordea's prior written consent, does not bind the Municipality. Were the lease agreement to be changed, it would be for TS to ensure that it obtains the consent of its creditor, i.e. Nordea.

(174) As to the condition for granting and maintaining the construction loan that the Municipality owns at least 77,93 % of TS, the Norwegian authorities recall that the board of TS, which entered into the loan agreement, does not have the authority to bind its shareholders and thereby the Municipality, including a potential future sale of shares. The loan agreements reflect that Nordea is well aware of the fact that the agreement cannot bind the Municipality, given that the second section provides that change in the ownership structure without consent implies a breach of contract by TS ([116]).

(175) However, the Authority finds the effects of the statements in the loan agreements unclear and can, at this point, not exclude that they provide an advantage to TS in the form of an implicit guarantee from the Municipality.

(176) The Authority invites the Norwegian authorities to submit further information in this regard.

([110]) The Authority understands that 'BRA' stands for 'area of use'.
([111]) Document No 1054294.
([112]) Document No 1054298, p. 6.
([113]) Document No 1054294, Loan Agreement between Nordea and TS, dated 11 December 2017, page 5, 'Other terms' – bullet point 3.
([114]) Document No 1054294, Loan Agreement between Nordea and TS, dated 11 December 2017, page 5, 'Other terms' – bullet point 4.
([115]) Document No 1054294, Loan Agreement between Nordea and TS, dated 11 December 2017, page 4, 'Change of ownership – mandatory mandatory early repayment' – first paragraph.
([116]) Document No 1054298, p. 7.

5.5. *The notion of undertaking*

(177) In order to constitute state aid within the meaning of Article 61 of the EEA Agreement, the measure must confer an advantage on an undertaking. Undertakings are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed ([117]). Consequently, the public or private status of an entity or the fact that an entity is partly or wholly publicly owned has no bearing as to whether or not that entity is an 'undertaking' within the meaning of state aid law ([118]).

(178) Economic activities are activities consisting of offering goods or services on a market ([119]). Conversely, entities that are not commercially active in the sense that they are not offering goods or services on a given market do not constitute undertakings. In general, both the construction and operation of an infrastructure constitute an economic activity in itself (and are thus subject to state aid rules) if that infrastructure is, or will be used, to provide goods or services on the market ([120]). State aid may be granted at several levels: construction, operation and use of the infrastructure ([121]).

(179) A single entity may carry out a number of activities, both economic and non-economic activities, provided that it keeps separate accounts for the different funds that it receives, so as to exclude any risk of cross-subsidisation of its economic activities by means of public funds received for its non-economic activities ([122]).

(180) Trondheim Spektrum is a multifunctional facility, which hosts, inter alia, concerts, large sport events, fairs, and congresses. Further, Trondheim Spektrum is scheduled to host in 2020 the European Championship in handball for men and women. TS also rents out facilities to the Municipality, which in turn makes them available to the sport clubs.

(181) It is undisputed that TS carries out economic activities, when hosting concerts, large sport events, fairs, congresses and other such events. Consequently, TS constitutes an undertaking within the meaning of Article 61 of the EEA Agreement, with regard to those activities.

(182) However, the Norwegian authorities have argued that the use of TS' facilities by sport clubs cannot be considered as an economic activity, given that neither the Municipality nor TS receives any remuneration from its users. On this basis, the Norwegian authorities have argued that TS provides its services on a market on a commercial basis only in so far as it is offering its spare capacity on the markets for trade fairs, concerts and other such activities. All other activities should be classified as non-economic ([123]).

(183) Even if the Municipality can be considered to be carrying out a non-economic activity by offering cost-free facilities for the Municipality's sport clubs, in principle, the entity supplying the Municipality with such facilities, might very well be carrying out economic activities when doing so. The non-economic activities relate to the services provided to the sport clubs, that is, the relationship between the Municipality and the sport clubs.

(184) Against that background, the Authority cannot exclude, at this point, that TS is an undertaking, not only when hosting concerts, large sport events, fairs, congresses and other events, but also when renting out its facilities to the Municipality, which then provides the hall space for the Municipality's sport clubs.

(185) In any event, TS carries out other economic activities and the Norwegian authorities have admitted that, at least in the past, no strict separation of accounts has been maintained as regards what had been considered economic and non-economic activities ([124]).

(186) Still, the Norwegian authorities have submitted to the Authority a model developed by BDO for the separation of accounts in TS, both for the future and regarding the past. This model has now been implemented by TS.

(187) However, the Authority does not have sufficient information at this point, based on the BDO cost allocation model and the cost projection for the future, to be convinced that the revenue from each activity covers their own set of costs.

([117]) Judgment in *Höfner and Elser* v *Macrotron*, Case C-41/90, EU:C:1991:161, paragraphs 21 – 23 and

([118]) Judgment in *Congregación de Escuelas Pías Provincia Betania* v *Ayuntamiento de Getafe*, Case C-74/16, EU:C:2017:496, paragraph 42.

([119]) Judgment in *Cassa di Risparmio di Firenze and Others*, Case C-222/04, EU:C:2006:8, paragraph 108.

([120]) Judgment in *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle* v *Commission*, Case C-288/11 P, EU:C:2012:821, paragraphs 40 – 43.

([121]) The Authority's Decision No 496/13/COL of 11 December 2013 concerning the financing of Harpa Concert Hall and Conference Centre, paragraph 50.

([122]) Judgment in *Congregación de Escuelas Pías Provincia Betania* v *Ayuntamiento de Getafe*, Case C-74/16, EU:C:2017:496, paragraph 51.

([123]) Document No 859501, p. 20.

([124]) Document No 859501, p. 19.

(188) Consequently, even if the renting out of TS' facilities to the Municipality for the purposes of providing cost-free facilities to the Municipality's sport clubs were to be considered non-economic, the Authority is not convinced that TS has excluded the risk that the public funds received could cross-subsidise economic activities.

(189) In light of the above, the Authority cannot exclude that the measures assessed in this decision have provided an advantage to TS' economic activities.

5.6. *Selectivity*

(190) To be characterised as state aid within the meaning of Article 61(1) of the EEA Agreement, the measure must also be selective in that it favours 'certain undertakings or the production of certain goods'. Not all measures which favour economic operators fall under the notion of aid, but only those which grant an advantage in a selective way to certain undertakings, categories of undertakings or to certain economic sectors.

(191) The potential aid measures at issue here are individual measures addressed only to TS. The measures are therefore selective within the meaning of Article 61(1) of the EEA Agreement.

5.7. *Impact on trade and distortion of competition*

(192) Public support to undertakings only constitutes state aid under Article 61(1) of the EEA Agreement, if it 'distorts or threatens to distort competition' and only insofar, as it is liable to 'affect trade' between EEA States.

(193) According to settled case-law, the mere fact that a measure strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade, is considered sufficient to conclude that the measure is likely to affect trade between EEA States and distort competition between undertakings established in other EEA States ([125]).

(194) To the extent that the measures assessed in this decision have not been carried out in line with normal market conditions, they have conferred an advantage on TS, which strengthens its position compared to other undertakings that it competes with.

(195) The Authority must further consider whether the measures are liable to affect trade between EEA States. In this regards, the Union Courts have ruled that 'where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid' ([126]).

(196) The City of Trondheim is the third largest city in Norway located about an hour's drive from the scarcely populated areas of mid-Sweden. Trondheim Spektrum has the capacity to host large and mid-size international events, which may also be held outside the region ([127]).

(197) On the other hand, the Norwegian authorities have submitted that taking into consideration that the majority of the activities carried out in Trondheim Spektrum are of local character and in light of the limited extent of the activities of TS in a market, as well as the marginal aid intensity, if any, it can consequently not be foreseen that the measures would have more than, at most, a marginal effect on the conditions of cross-border investment or establishment ([128]).

(198) The Authority notes that an effect on trade cannot be merely hypothetical or presumed. It must be established why the measure distorts or threatens to distort competition and is liable to have an effect on trade between EEA States, based on the foreseeable effects of the measure ([129]).

(199) The Authority and the Commission have in a number of decisions considered that certain activities and measures, in view of their specific circumstances, have a purely local impact and consequently no effect on trade between EEA States. In those cases, the Authority and the Commission ascertained, in particular, that the beneficiary provided services to a limited area within an EEA Sate and was unlikely to attract customers from other EEA States and that it could not be foreseen that the measure would have more than marginal effect on the conditions of cross-border investments or establishments. Some of these decisions concerned sports and leisure facilities serving predominantly a local audience and unlikely to attract customers or investment from other EEA States ([130]).

([125]) Case E-6/98 *The Government of Norway* v *EFTA Surveillance Authority* [1999] EFTA Ct. Rep. 76, paragraph 59; and judgment in *Philip Morris* v *Commission*, C-730/79, EU:C:1980:209, paragraph 11.

([126]) Judgment in *Eventech* v *The Parking Adjudicator*, C-518/13, EU:C:2015:9, paragraph 66.

([127]) Document No 859501, p. 22.

([128]) Document No 859501, p. 22.

([129]) See, for instance, judgment in *AITEC and others* v *Commission*, T-447/93, T-448/93 and T-449/93, EU:T:1995:130, paragraph 141.

([130]) See, for instance, Commission Decisions in cases N 258/2000 Leisure Pool Dorsten (OJ C 172, 16.6.2001, p. 16); Commission Decision 2004/114/EC of 29 October 2003 on measures in favour of non-profit harbours for recreational crafts, the Netherlands (OJ L 34, 6.2.2004, p. 63); SA.37963 – United Kingdom – Alleged State aid to Glenmore Lodge (OJ C 277, 21.8.2015, p. 3); SA.38208 – United Kingdom – Alleged State aid to UK member-owned golf clubs (OJ C 277, 21.8.2015, p. 4); the Authority's Decision No 459/12/COL of 5 December 2012 on aid to Bømlabadet Bygg AS for the construction of the Bømlabadet aqua park in the Municipality of Bømlo; and Decision No 20/19/COL of 2 April 2019 Leangbukten Båtforenings Andelslag.

(200) In the case at hand, the Authority notes that even though some of the activities carried out by TS are of local character, TS also hosts events such as trade fairs, which attract foreign customers. Moreover, TS will host the European handball Championship in 2020, which can be assumed to attract foreign customers.

(201) Finally, the market for organising international events is open to competition between venue providers and event organisers, which generally engage in activities that are subject to trade between EEA States ([131]).

(202) In light of the above, at this stage, the Authority considers that the measures at issue threaten to distort competition and are liable to effect trade between EEA States.

6. **Conclusion on the presence of aid**

(203) The Authority takes the preliminary view that measures 4 to 7 and 9, as specified above, may entail state aid within the meaning of Article 61(1) of the EEA Agreement.

7. **Procedural requirements**

(204) Pursuant to Article 1(3) of Part I of Protocol 3 SCA: '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'.

(205) The Norwegian authorities have not notified all of the measures in question to the Authority. The Authority therefore reaches the preliminary conclusion that the Norwegian authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3 SCA, and that to the extent measures 4, 7 and 9 entail state aid, that aid is unlawful.

(206) The Norwegian authorities notified the new lease agreement of 2019, measure 5, on 29 November 2018 ([132]). The new lease agreement was signed by TS and the Municipality on 25 September and 26 October 2017 respectively and will enter into force on 1 December 2019. The Norwegian authorities have argued that the new lease agreement is conditional upon being in line with market terms ([133]). It explicitly enables adaptations to bring the conditions of the agreement in line with market terms should the Authority so require. In light of this, the Authority's preliminary conclusion is that, should the lease agreement entail state aid, the Norwegian authorities have respected the requirement set out in Article 1(3) of Part I of Protocol 3 SCA. However, finding this conclusion less than certain, the Authority specifically invites the Norwegian authorities to submit further information in this regard.

(207) Furthermore, as regards measure 6, the capital increase, the Authority notes that the Norwegian authorities have granted this aid to TS under Article 55 of the GBER ([134]). State aid measures fulfilling all the requirements of Chapter I of the GBER, as well as the specific conditions for the relevant category of aid laid down in Chapter III of the GBER, shall be exempted from the notification requirement. However, as further explained below in section 8 of this decision, the Authority is not fully convinced that the requirements set out in Article 6(2) GBER are fulfilled in relation to this measure. Further assessment of the measure seems required. If the Authority would find that measure 6 does not fulfil the requirements of the GBER it would qualify as unlawful aid.

8. **Compatibility of any aid**

(208) Should the measures 4 to 7 and 9 entail state aid within the meaning of Article 61(1) of the EEA Agreement, the Authority must assess whether the aid can be declared compatible with the functioning of the EEA Agreement. It is up to the Norwegian authorities to invoke possible grounds of compatibility and to demonstrate that the conditions for such compatibility are met ([135]).

(209) Should the Authority consider that the measures at issue entail elements of (new) aid, the Norwegian authorities are of the view that they would in any event be compatible with the EEA Agreement.

([131]) See to that effect the Authority's Decision No 496/13/COL of 11 December 2013 concerning the financing of Harpa Concert Hall and Conference Centre, paragraph 75.

([132]) See further section 2.6. The Authority requested additional information from the Norwegian authorities on 28 January 2019, which the Norwegian authorities provided on 21 February 2019.

([133]) Article 12 of the new lease agreement of 2019 states (in Norwegian): '*Denne avtalen forutsettes å være inngått på markedsmessige vilkår. Det tas forbehold om at avtalen vil – forut for og i avtaleperioden – justeres for å tilfredsstille eventuelle føringer/krav fra EFTAs overvåkningsorgan (ESA), og/eller andre offentlige myndigheter. Dette for at avtalen til enhver tid skal tilfredsstille markedsinvestorprinsippet.*'

([134]) See section 4.7 above.

([135]) Judgment in *Italy* v *Commission*, C-364/90 EU:C:1993:157, paragraph 20.

(210) The Norwegian authorities have noted that the Authority has recognised the promotion of sport as a common objective in a number of decisions ([136]). Similarly, the European Commission has authorised a large number of aid measures in support of sports and multipurpose facilities ([137]).

(211) Further, the Norwegian authorities refer to Article 55 of the GBER which allows for aid for the construction of sports – or multipurpose infrastructure. In the Norwegian authorities' view, to some extent, TS arguably also fulfils objectives relating to culture, another well-established objective of common interest ([138]).

(212) The Norwegian authorities have submitted that TS will not break even without revenue from the lease agreement. The Norwegian authorities consider that there is a demonstrated need for state intervention both as regards the provision of hall capacity to sport clubs and as regards the financing of sports facilities themselves.

(213) The Norwegian authorities submit that in their view, there is no other policy instrument that would have been equally suited to attain the objective and which would be less distortive. The only other option would be for the Municipality to construct, own and operate a similar infrastructure itself, which, in the Norwegian authorities' view, would hardly be less distortive.

(214) The Norwegian authorities refer to previous decisions of the Authority and state that in the absence of the lease agreement, the sport clubs would evidently not gain access to free hall time in TS. Even a lower level of the lease would put the entire operation of TS at risk and thereby jeopardise both the provision of hall capacity to sport clubs and the existence of TS as such ([139]).

(215) As regards the incentive effect of the lease agreements, TS could not finance the projects absent the revenue stream from the municipal lease agreement. In that regard, the Norwegian authorities recall that the lease agreements, while intended to be entered into on market terms – also took account of TS' cost structure. Lower income from the Municipality would have left a hole in TS' balance sheet that other – commercial – activities may not have been able to fill. The infrastructure would also have been designed in a different manner and not have taken account of the needs of various kinds of amateur sport. In view of the forgoing, the Norwegian authorities consider that any potential aid clearly has an incentive effect ([140]).

(216) The Norwegian authorities further refer to the compatibility criteria under Article 55 of the GBER and state that the actual aid element must necessarily be lower than the thresholds in the GBER and that higher amounts could, in any event, be approved under Article 61(3)(c) of the EEA Agreement, in particular, if that aid does not lead to more than a reasonable profit, which according to current projections, is not the case. In view of this, the Norwegian authorities consider that any potential aid, inherent in the lease agreement, is proportionate and limited to the minimum necessary.

(217) The Norwegian authorities have further stated that if any of the measures addressed would be found to constitute state aid it would be equally clear that those measures would be proportionate. The aid element would be minor in comparison to the costs of constructing and operating Trondheim Spektrum. The Norwegian authorities do not consider it meaningful to calculate a precise potential aid intensity, as undoubtedly, the vast part if not all of the public financing has benefitted TS' non-economic activities.

(218) In any event, it is apparent from TS' income statement that it generates a large percentage of its income from sales to third parties and the Municipality takes full account of TS' other revenues when negotiating the lease agreements. As a result, the aid is limited to the minimum necessary.

([136]) The Norwegian authorities refer to the Authority's Decision No 357/15/COL of 23 September 2015 to close the formal investigation into State aid in favour of Sandefjord Fotball AS, Decision No 225/15/COL of 10 June 2015 raising no objections to aid in the form of a transfer of land to Vålerenga Fotball, and Decision No 13/18/COL of 29 January 2018 – Templarheimen II – Aid for the construction and operation of the sports facility Templarheimen.

([137]) The Norwegian authorities refer to Commission Decision in case SA.33728 on the financing of a new multiarena in Copenhagen.

([138]) The Norwegian authorities refer to Article 53 of the GBER, in particular paragraph 2 thereof, and the Authority's Decision No 496/13/COL of 11 December 2013 concerning the financing of Harpa Concert Hall and Conference Centre.

([139]) Document No 1046041, p. 13.

([140]) Document No 1040641, p. 14.

(219) The Norwegian authorities further refer to the BDO report and state that no cross-subsidisation of the commercial activities occurs. Even if the Authority refuses to exclude the presence of aid in the lease agreement, based on the benchmarks submitted by the Norwegian authorities, these benchmarks prove that the lease agreement's pricing falls within the range of what is customary in this market in Norway. In that regard, the Municipality notes that the Authority has previously accepted such benchmarks in an infrastructure case as a means to ensure the proportionality of the aid ([141]).

(220) The Norwegian authorities consider that, as any aid amount would be insignificant and as TS does not undercharge its commercial users, any effect on trade between EEA States or distortion of competition would be insignificant at most. The Norwegian authorities therefore submit that a balancing test would need to result in finding any potential aid to TS compatible with the EEA Agreement ([142]).

(221) The Norwegian authorities state that TS in its present form is a cornerstone of the sports and cultural offer available in Trondheim, in particular, as regards free amateur sports. As for the negative effects, the BDO report supports the claim that any aid is used to finance activities of local (and most likely non-economic) character, with no spill-over to the commercial, market oriented activities that TS also performs.

(222) According to the Norwegian authorities, it would appear common ground that private investment into facilities such as TS is rare and, in any event, insufficient. In the Norwegian authorities' view, the aid would therefore not be capable of crowding out private investment.

(223) Further, Trondheim is geographically very isolated by European standards and thus unlikely to compete (directly) with other similar venues in Norway, or even less likely, in other EEA States. Even if that would be the case, that does not seem to have led the Authority or the Commission to question the compatibility of aid to such infrastructures. In addition, the Norwegian authorities have shown that TS does not undercharge its commercial users.

(224) The Authority notes that aid to promote sport and culture, including aid to sport and multi-purpose infrastructure, can be declared compatible with the functioning of the EEA Agreement under certain conditions, as illustrated by Article 55 of the GBER and the decisional practice of the European Commission ([143]) and the Authority ([144]).

(225) The possible aid measures at hand vary in nature. At this stage, the Authority does not have the information to enable it to set out the total possible amount of alleged aid granted to TS that would result from these measures. The Authority must thus conclude that it has doubts as to whether the measures would respect the principle of proportionality and be limited to what is necessary to achieve the stated objective.

(226) Furthermore, the Authority does not have sufficient information at this point, based on the BDO cost allocation model and the cost projections for the future, to be convinced that the revenue from each activity covers their own set of costs. Consequently, the Authority cannot exclude cross-subsidization from the alleged aid measures to the other activities carried out by TS.

(227) As to the claims of unlawful state aid granted to TS in the form of the implicit guarantee alleged to be granted in relation to the loan agreement and the alleged relief of infrastructure costs, the Norwegian authorities have not put forward any arguments, regarding possible compatibility with the functioning of the EEA Agreement, in case these measures are found to constitute state aid within the meaning of Article 61(1) of the EEA Agreement. The Authority invites the Norwegian authorities to submit information in this regard.

(228) As regards the capital increase, referred to as measure 6 in this decision, the Authority notes that the Norwegian authorities have granted this aid to TS under Article 55 of the GBER ([145]). The Norwegian authorities have provided information relating to the increased and extra costs pertaining to the extension and renovation of Trondheim Spektrum, which led to the capital increase being granted to TS ([146]). In previous correspondence between the Authority and the Norwegian authorities, the Authority had raised the issue of whether the measure fulfilled the criteria set out in Article 6(2) of the GBER. The Norwegian authorities have stated that TS cannot complete the expansion without the requested capital. The Norwegian authorities therefore consider that the aid complies with Article 6 GBER.

([141]) Document No 1040641, p. 15.

([142]) Document No 859501, p. 25.

([143]) See e.g. Commission Decision in case SA.33728 Financing of a new multiarena in Copenhagen, Commission Decision in case SA.33618 Sweden – Uppsala arena, Commission Decision in case SA.47683 Finland – Tampere Arena.

([144]) The Authority's Decision No 357/15/COL of 23 September 2015 to close the formal investigation into State aid in favour of Sandefjord Fotball AS, Decision No 225/15/COL of 10 June 2015 raising no objections to aid in the form of a transfer of land to Vålerenga Fotball, and Decision No 13/18/COL of 29 January 2018 – Templarheimen II – Aid for the construction and operation of the sports facility Templarheimen.

([145]) See section 4.7 above.

([146]) Document No 930813. Letter from the Norwegian authorities dated 21 September 2018.

(229) Article 6(1) GBER states that the Regulation shall only apply to aid, which has an incentive effect. According to Article 6(2) GBER: 'Aid shall be considered to have an incentive effect if the beneficiary has submitted written application for the aid to the Member State concerned before work on the project or activity starts. The application for the aid shall contain at least the following information: a) undertaking's name and size; b) description of the project, including its start and end dates; c) location of the project; d) list of project costs; type of aid (grant, loan, guarantee, repayable advance, equity injection or other) and amount of public funding needed for the project'.

(230) The Norwegian authorities have explained that originally the project costs were estimated to be approximately NOK 536 million (approximately EUR 55,37 million). However, the expectation now is that they will be approximately NOK 591 million (approximately EUR 61,05 million), due, in particular, to the fact that the scope of the project increased. The increased costs of NOK 55 million (approximately EUR 5,68 million) can be attributed two both, as described by the Norwegian authorities, new costs (increased scope of the project) and unexpected costs (budget overruns).

(231) As explained by the Norwegian authorities in relation to the measure, Trondheim Spektrum has been undergoing a significant renovation and extension project since summer 2017. TS applied for a capital increase of NOK 55 million (approximately EUR 5,68 million) on 6 July 2018, and was granted the aid on 5 December 2018. It therefore seems that the aid was granted after the work on the renovation and extension project started.

(232) In light of the above, the Authority has doubts, at this point, as to whether the measure fulfils the criteria set out in Article 6(2) GBER. The Authority invites the Norwegian authorities to provide further information in this regard.

(233) The Norwegian authorities have not presented arguments concerning compatibility of the measure directly under Article 61(3)(c) of the EEA Agreement, in the event that it would be considered that the GBER would not be applicable to the measure. The Authority invites the Norwegian authorities to provide information in this regard.

(234) Consequently, following its preliminary assessment, the Authority has doubts as to whether the measures could be deemed compatible under Article 61(3)(c) of the EEA Agreement.

9. **Conclusion**

(235) As set out above, the Authority considers that measures 4 to 7 and 9, as described above, may constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

(236) The Authority has doubts as to whether these measures are compatible with the functioning of the EEA Agreement.

(237) Consequently, and in accordance Article 4(4) of Part II of Protocol 3 SCA, the Authority is obliged to open the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 SCA. The decision to open a formal investigation procedure is without prejudice to the final decision of the Authority, which may conclude that the measures do not constitute state aid, or that any aid is compatible with the functioning of the EEA Agreement.

(238) The Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3 SCA, invites the Norwegian authorities to submit, by **Monday, 20 May 2019**, their comments and to provide all documents, information and data needed for the assessment of these measures in light of the state aid rules.

(239) The Authority requests the Norwegian authorities to forward a copy of this decision to Trondheim Spektrum AS.

(240) The Authority must remind the Norwegian authorities that, according to Article 14 of Part II of Protocol 3 SCA, any incompatible aid unlawfully granted to the beneficiary will have to be recovered, unless (exceptionally) this recovery would be contrary to a general principle of EEA law.

(241) If this letter contains confidential information which should not be disclosed to third parties, please inform the Authority by **13 May 2019**, identifying the confidential elements and the reasons why the information is considered to be confidential. In doing so, please consult the Authority's Guidelines on Professional Secrecy in State Aid Decisions [147]. If the Authority does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter on the Authority's website: http://www.eftasurv.int/state-aid/state-aid-register/.

Done in Brussels, 16 April 2019.

For the EFTA Surveillance Authority

Bente ANGELL-HANSEN
President
Responsible College Member

Frank J. BÜCHEL
College Member

Högni KRISTJÁNSSON
College Member

Carsten ZATSCHLER
Countersigning as Director
Legal and Executive Affairs

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(147) OJ L 154, 8.6.2006, p. 27 and EEA Supplement No 29, 8.6.2006, p. 1.

V

(Announcements)

ADMINISTRATIVE PROCEDURES

EUROPEAN PERSONNEL SELECTION OFFICE (EPSO)

Notice of open competition

(2019/C 177/05)

The European Personnel Selection Office (EPSO) is organising the following open competition:

EPSO/AD/373/19 — ADMINISTRATORS (AD 5)

The competition notice is published in 24 languages in *Official Journal of the European Union* C 177 A of 23 May 2019.

Further information can be found on the EPSO website: https://epso.europa.eu/

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Prior notification of a concentration

(Case M.9323 — RheinEnergie/SPIE/TankE)

Candidate case for simplified procedure

(Text with EEA relevance)

(2019/C 177/06)

1. On 16 May 2019, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ([1]).

This notification concerns the following undertakings:

— RheinEnergie AG ('RheinEnergie', Germany),

— SPIE Deutschland & Zentraleuropa GmbH ('SPIE', Germany), belonging to the SPIE Group (France).

RheinEnergie and SPIE acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of the newly created joint venture TankE, which will provide services in the electro-mobility sector, in particular the procurement and installation of charging infrastructure for all types of electric vehicles as well as related consulting, operating and management services.

The concentration is accomplished by way of purchase of shares in a newly created company constituting a joint venture.

2. The business activities of the undertakings concerned are:

— for RheinEnergie: a regional, vertically integrated energy and water supply company indirectly controlled by the city of Cologne,

— for SPIE: multi-technical services for buildings, installations and infrastructures. The SPIE Group offers mechanical and electro-technical engineering and technical facility management services as well as information and communication services.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved.

Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under the Council Regulation (EC) No 139/2004 ([2]) it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. The following reference should always be specified:

M.9323 — RheinEnergie/SPIE/TankE

([1]) OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').
([2]) OJ C 366, 14.12.2013, p. 5.

Observations can be sent to the Commission by email, by fax, or by post. Please use the contact details below:

Email: COMP-MERGER-REGISTRY@ec.europa.eu

Fax +32 22964301

Postal address:

European Commission
Directorate-General for Competition
Merger Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Prior notification of a concentration

(Case M.9328 — Platinum Equity Group/Multi-Color Corporation)

Candidate case for simplified procedure

(Text with EEA relevance)

(2019/C 177/07)

1. On 8 May 2019, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ([1]).

This notification concerns the following undertakings:

— Platinum Equity Group (United States),

— Multi-Color Corporation (United States).

Platinum Equity Group ('Platinum Equity') acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Multi-Color Corporation ('MCC').

The concentration is accomplished by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for Platinum Equity: merger, acquisition and operation of companies that provide services and solutions to customers in a broad range of businesses, including information technology, telecommunication, logistics, metal services, manufacturing and distribution,

— for MCC: manufacture and supply of labels to commercial customers across a range of sectors, including: home and personal care, food and beverage, healthcare, specialty, consumer durables, and wine and spirits.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved.

Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under the Council Regulation (EC) No 139/2004 ([2]) it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. The following reference should always be specified:

M.9328 — Platinum Equity Group/Multi-Color Corporation

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