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(Tiedonannot)

EUROOPAN UNIONIN TOIMIELINTEN, ELINTEN, TOIMISTOJEN JA VIRASTOJEN TIEDONANNOT

EUROOPAN KOMISSIO

Ilmoitetun keskittymän vastustamatta jättäminen

(Asia COMP/M.6843 – Siemens/Invensys Rail)

(ETA:n kannalta merkityksellinen teksti)

(2013/C 237/01)

Komissio päätti 18 päivänä huhtikuuta 2013 olla vastustamatta edellä mainittua keskittymää ja todeta sen yhteismarkkinoille soveltuvaksi. Päätös perustuu neuvoston asetuksen (EY) N:o 139/2004 6 artiklan 1 kohdan b alakohtaan. Päätöksen koko teksti on saatavilla vain englannin kielellä, ja se julkistetaan sen jälkeen kun siitä on poistettu mahdolliset liikesalaisuudet. Päätös on saatavilla:

— komission kilpailun pääosaston verkkosivuilla (http://ec.europa.eu/competition/mergers/cases/); sivuilla on monenlaisia hakukeinoja sulautumapäätösten löytämiseksi, muun muassa yritys-, asianumero-, päivämäärä- ja alakohtaiset hakemistot,

— sähköisessä muodossa EUR-Lex-sivustolta (http://eur-lex.europa.eu/en/index.htm) asiakirjanumerolla 32013M6843. EUR-Lex on Euroopan yhteisön oikeuden online-tietokanta.

IV

(Tiedotteet)

EUROOPAN UNIONIN TOIMIELINTEN, ELINTEN, TOIMISTOJEN JA VIRASTOJEN TIEDOTTEET

EUROOPAN KOMISSIO

Euron kurssi [1]

14. elokuuta 2013

(2013/C 237/02)

1 euro =

	Rahayksikkö	Kurssi		Rahayksikkö	Kurssi
USD	Yhdysvaltain dollaria	1,3243	AUD	Australian dollaria	1,4524
JPY	Japanin jeniä	130,17	CAD	Kanadan dollaria	1,3689
DKK	Tanskan kruunua	7,4583	HKD	Hongkongin dollaria	10,2705
GBP	Englannin puntaa	0,85440	NZD	Uuden-Seelannin dollaria	1,6501
SEK	Ruotsin kruunua	8,6393	SGD	Singaporen dollaria	1,6835
CHF	Sveitsin frangia	1,2415	KRW	Etelä-Korean wonia	1 482,39
ISK	Islannin kruunua		ZAR	Etelä-Afrikan randia	13,2129
NOK	Norjan kruunua	7,8130	CNY	Kiinan juan renminbiä	8,1041
BGN	Bulgarian leviä	1,9558	HRK	Kroatian kunaa	7,5415
CZK	Tšekin korunaa	25,822	IDR	Indonesian rupiaa	13 667,59
HUF	Unkarin forinttia	298,62	MYR	Malesian ringgitiä	4,3351
LTL	Liettuan litiä	3,4528	PHP	Filippiinien pesoa	57,975
LVL	Latvian latia	0,7025	RUB	Venäjän ruplaa	43,8995
PLN	Puolan zlotya	4,2037	THB	Thaimaan bahtia	41,504
RON	Romanian leuta	4,4315	BRL	Brasilian realia	3,0586
TRY	Turkin liiraa	2,5664	MXN	Meksikon pesoa	16,8756
			INR	Intian rupiaa	81,3700

[1] *Lähde*: Euroopan keskuspankin ilmoittama viitekurssi.

EUROOPAN TALOUSALUEESEEN LIITTYVÄT TIEDOTTEET

EFTAn VALVONTAVIRANOMAINEN

Valtiontuki – Päätös lopettaa olemassa olevaa tukea koskevan asian käsittely EFTA-valtion hyväksyttyä aiheelliset toimenpiteet

(2013/C 237/03)

EFTAn valvontaviranomainen on ehdottanut seuraavaan tukitoimenpiteeseen liittyviä aiheellisia toimenpiteitä, jotka Islanti hyväksyi:

Päätöksen antamispäivä:	24. huhtikuuta 2013
Tuen numero:	70958
Päätöksen numero:	159/13/KOL
EFTA-valtio:	Islanti
Nimike:	Landsvirkjunille ja Orkuveita Reykjavíkurille myönnetty valtiontuki
Oikeusperusta:	Laki 42/1983 Landsvirkjunista, paikallishallintolaki 45/1998, laki 139/2001 Orkuveita Reykjavíkurin perustamisesta yhteisomistuksessa olevaksi yhtiöksi ja laki 121/1997 valtiontakuista.
Tavoite:	Ei sovelleta
Tukimuoto:	Valtio- ja kuntaomistajien Landsvirkjunille ja Orkuveita Reykjavíkurille antamat rajoittamattomat takaukset ilman markkinahintojen mukaisia asianmukaisia maksuja
Toimialat:	Sähköala
Lisätietoja:	Islannin viranomaiset tekivät toimenpiteitä ja antoivat lisäsitoumuksia, jotta Landsvirkjunille ja Orkuveita Reykjavíkurille annetut rajoittamattomat valtiontakaukset poistettaisiin, minkä ansiosta valvontaviranomaisen epäilykset järjestelmän soveltumattomuudesta yhteismarkkinoille poistuivat ja tutkinta lopetettiin.

Päätöksen koko teksti, josta on poistettu luottamukselliset tiedot, on saatavissa todistusvoimaisella kielellä EFTAn valvontaviranomaisen internetsivuilta:

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

Kehotus huomautusten esittämiseen valvontaviranomaisen ja tuomioistuimen perustamisesta tehdyn EFTA-valtioiden sopimuksen pöytäkirjassa 3 olevan I osan 1 artiklan 2 kohdan mukaisesti valtiontukiasiasta, joka koskee aluetukea investointikannustinohjelmalle Islannissa ja kuutta investointisopimusta

(2013/C 237/04)

EFTAn valvontaviranomainen aloitti 30. huhtikuuta 2013 tehdyllä, tätä tiivistelmää seuraavilla sivuilla todistusvoimaisella kielellä toistetulla päätöksellä N:o 177/13/KOL valvontaviranomaisen ja tuomioistuimen perustamisesta tehdyn EFTA-valtioiden sopimuksen pöytäkirjassa 3 olevan I osan 1 artiklan 2 kohdassa tarkoitetun menettelyn. Jäljennös päätöksestä on toimitettu tiedoksi Islannin viranomaisille.

EFTAn valvontaviranomainen kehottaa EFTA-valtioita, EU:n jäsenvaltioita ja muita asianomaisia lähettämään kyseistä toimenpidettä koskevat huomautuksensa kuukauden kuluessa tämän ilmoituksen julkaisemisesta seuraavaan osoitteeseen:

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

Huomautukset toimitetaan Islannin viranomaisille. Huomautusten esittäjä voi pyytää kirjallisesti henkilöllisyytensä luottamuksellista käsittelyä. Tämä pyyntö on perusteltava.

TIIVISTELMÄ

Menettely

Valvontaviranomainen hyväksyi 13. lokakuuta 2010 päätöksellä N:o 390/10/KOL investointikannustimia koskevan ohjelman, jäljempänä 'ohjelma', josta Islannin viranomaiset olivat ilmoittaneet pöytäkirjassa 3 olevan I osan 1 artiklan 3 kohdan mukaisesti.

Ohjelman myötä on mahdollista myöntää tukea suorina avustuksina myöntämällä erilaisia verovapautuksia jopa 10 vuoden ajaksi sekä myymällä ja vuokraamalla maata sen markkina-arvoa alhaisemmalla hinnalla minkä tahansa alan paitsi rahoitusalan yrityksille sellaisten alkuinvestointien yhteydessä, jotka kohdistetaan aluetukeen Islannissa oikeutetuille alueille (ns. "c alakohdan mukaiset alueet"). Ohjelman voimassaolo päättyy 31 päivänä joulukuuta 2013.

Valvontaviranomaisen hyväksymä ohjelman oikeusperusta on seuraava:

— Islannin parlamentin 29. kesäkuuta 2010 antama, Islantiin tehtävien alkuinvestointien kannustimia koskeva laki N:o 99/2010, ja

— teollisuusministeriön 25. marraskuuta 2010 antama Islantiin tehtävien alkuinvestointien kannustimia koskeva asetus (EU) N:o 985/2010, joka vastaa valvontaviranomaiselle 27. syyskuuta 2010 esitettyä asetusluonnosta. Asetus on edellä mainittuun lakiin perustuvaa sekundäärilainsäädäntöä.

Teollisuusministeriö antoi 30. joulukuuta 2010 uuden asetuksen, asetuksen (EU) N:o 1150/2010, jäljempänä 'täydentävä asetus', jolla asetusta muutettiin, erityisesti investointituen kannustavan vaikutuksen varmistamisen osalta. Täydentävästä asetuksesta ei ilmoitettu valvontaviranomaiselle.

Islannin valtio teki vuosina 2010–2013 useita sopimuksia, joiden se katsoi kuuluvan ohjelman piiriin, jäljempänä 'kuusi investointisopimusta':

1) 30. joulukuuta 2010 Becromal Iceland ehf:n kanssa

2) 30. joulukuuta 2010 Thorsil ehf:n kanssa

3) 17. helmikuuta 2011 Íslenska Kísilfélagið ehf:n kanssa

4) 22. syyskuuta 2011 Verne Real Estate II ehf:n kanssa

5) 7. toukokuuta 2012 GMR Endurvinnslan ehf:n kanssa

6) 28. tammikuuta 2013 Marmeti ehf:n kanssa.

Islannin viranomaiset ilmoittivat valvontaviranomaiselle ilmoitusta edeltävän yhteydenpitovaiheen jälkeen 13. joulukuuta 2012 pöytäkirjassa 3 olevan I osan 1 artiklan 3 kohdan mukaisesti lakiin ehdotetuista muutoksista, jäljempänä 'ilmoitetut muutokset'.

Toimenpiteen arviointi

Ilmoitettuihin muutoksiin kuului seuraavaa: suorien avustusten lakkauttaminen, uusi menetelmä enimmäisyhtiöverotason määräämiseksi kaikille ohjelmaan kuuluville uusille hankkeille, vapautus leimaverosta sekä kunnallisesta kiinteistöverosta ja sosiaaliturvaverosta myönnettävien vapautusten tason korottaminen. Valvontaviranomainen päätteli alustavasti, että ohjelmaan ilmoitettuja muutoksia ei voinut irrottaa ohjelmasta. Sen vuoksi se arvioi koko muutetun ohjelman. Lisäksi se arvioi ohjelman soveltamista ja katsoi, että tietyt osa-alueet kuudessa investointisopimuksessa, jotka Islanti oli tehnyt muutetun ohjelman perusteella, aiheuttivat epävarmuutta ohjelman soveltuvuudesta ETA-sopimuksen toimintaan.

Valvontaviranomainen epäili erityisesti sitä, oliko Becromal-, Kísilfélagið- ja Verne-investointisopimuksiin liittyvä tuki myönnetty ohjelman soveltamisalan mukaisesti, sellaisena kuin valvontaviranomainen sen oli hyväksynyt, ja noudatettiinko sen yhteydessä edellytystä investointituen kannustinvaikutuksesta.

Lisäksi valvontaviranomainen katsoi, ettei ollut selvää, oliko Marmeti-investointisopimuksen tekemisen yhteydessä noudatettu ohjelman soveltamisalaa kannustinvaikutusta koskevan edellytyksen osalta.

Valvontaviranomainen epäili myös sitä, määrätäänkö Thorsil- ja GMR-investointisopimusten tietyissä osissa tuesta, joka ei kuulu hyväksytyn ohjelman piiriin.

Näin ollen valvontaviranomainen epäili, voitiinko tukiohjelmaa, sellaisena kuin se on muutettuna, ja kuuden investointisopimuksen perusteella myönnettyä tukea pitää ETA-sopimuksen toimintaan soveltuvina.

Päätelmät

Edellä esitetyn perusteella valvontaviranomainen epäilee, etteivät muutettu ohjelma ja edellä mainitut kuusi investointisopimusta ole ETA-sopimuksen 61 artiklan 3 kohdan eivätkä valvontaviranomaisen aluetukisuuntaviivojen edellytysten mukaiset.

Edellä esitettyjen seikkojen perusteella valvontaviranomainen on päättänyt aloittaa valvontaviranomaisen ja tuomioistuimen perustamisesta tehdyn EFTA-valtioiden sopimuksen pöytäkirjassa 3 olevan I osan 1 artiklan 2 kohdan mukaisen muodollisen tutkintamenettelyn, joka koskee Islannin viranomaisten täytäntöön panemaa investointikannustinohjelmaa ja niiden siihen ilmoittamia muutoksia, sellaisena kuin se on muutettuna asetuksella (EU) N:o 1150/2010, sekä kuutta investointisopimusta.

Asianomaisia kehotetaan esittämään huomautuksensa kuukauden kuluessa päivästä, jona tämä ilmoitus julkaistaan *Euroopan unionin virallisessa lehdessä*.

EFTA SURVEILLANCE AUTHORITY DECISION

No 177/13/COL

of 30 April 2013

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

(Iceland)

THE EFTA SURVEILLANCE AUTHORITY ('THE AUTHORITY'),

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

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

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

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

Whereas:

I. FACTS

1. Chronology of events

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

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

(3) The scheme expires on 31 December 2013.

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

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

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

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

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

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

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

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

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

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

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

2. Procedure

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

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

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

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

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

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

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

3.1. ***Background***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) The amendments concern:

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

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

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

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

Article 3

Conditions for granting aid

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

[…]

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

[…]

Article 8

Aid relating to taxes and other public fees

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

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

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

[…]

Article 20

Agreement on the granting of aid

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

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

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

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

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

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

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

3.4. *The six investment agreements*

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

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

Table 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. ASSESSMENT

1. The presence of State aid

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

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

'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.'

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

1.2. *Presence of State resources*

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

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

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

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

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

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

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

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

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

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

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

1.5. ***Conclusion***

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

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

2. **New aid procedure**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. **Procedural requirements**

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

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

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

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

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

4. **Compatibility of the aid**

4.1. ***Introduction***

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

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

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

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

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

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

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

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

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

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

4.2.1. *The application of the scheme*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.3.1. *The Becromal Investment Agreement*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.3.1.2. Retroactive effect of maximum income tax

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

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

(105) Further, Article 7.1 reads:

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

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

4.3.1.3. The investment costs and aid ceiling

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.3.1.5. Credit balance against future tax

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

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

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

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

4.3.1.6. Large investment project and individual notification obligation

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

4.3.2. *The Kísilfélagið Investment Agreement*

4.3.2.1. The project

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

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

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

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

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

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

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

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

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

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

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

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

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

4.3.2.4. The investment costs and aid ceiling

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

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

4.3.2.5. Addtional aid in case of amendments of the scheme

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

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

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

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

4.3.2.6. Effectiveness guarantee

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

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

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

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

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

4.3.3. *The Verne Investment Agreement*

4.3.3.1. The project and the incentive effect of the aid

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

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

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

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

4.3.3.2. The investment costs and aid ceiling

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

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

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

4.3.3.3. Additional aid in case of amendments of the scheme

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

4.3.3.4. Effectiveness guarantee

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

4.3.3.5. Large investment project

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

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

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

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

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

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

4.3.5. *The Thorsil Investment Agreement*

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

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

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

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

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

4.3.6. *The GMR Investment Agreement*

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

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

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

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

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

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

4.3.7. *The Marmeti Investment Agreement*

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

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

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

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

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

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

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

4.3.8. *Conclusion*

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

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

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

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

5. **Conclusion**

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

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

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

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

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

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

HAS ADOPTED THIS DECISION:

Article 1

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

Article 2

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

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

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

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

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

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

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

Article 3

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

Article 4

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

Article 5

This Decision is addressed to Iceland.

Article 6

Only the English language version of this Decision is authentic.

Done at Brussels, 30 April 2013.

For the EFTA Surveillance Authority

Oda Helen SLETNES
President

Sabine MONAUNI-TÖMÖRDY
College Member

V

(Ilmoitukset)

KILPAILUPOLITIIKAN TOTEUTTAMISEEN LIITTYVÄT MENETTELYT

EUROOPAN KOMISSIO

Komission tiedonanto – julkaistu neuvoston asetuksen (EY) N:o 1/2003 27 artiklan 4 kohdan nojalla asioissa AT.39678 Deutsche Bahn I, AT.39731 Deutsche Bahn II ja AT.39915 Deutsche Bahn III

(2013/C 237/05)

1. JOHDANTO

1. Perustamissopimuksen 101 ja 102 artiklassa vahvistettujen kilpailusääntöjen täytäntöönpanosta 16 päivänä joulukuuta 2002 annetun neuvoston asetuksen (EY) N:o 1/2003 ([1]) 9 artiklassa säädetään, että jos komissio aikoo tehdä päätöksen, jossa rikkominen määrätään lopetettavaksi, ja kun asianomaiset yritykset esittävät sitoumuksia, joiden tarkoituksena on poistaa komission ennakkoarvioinnissaan niille esittämät huolenaiheet, komissio voi päätöksellään määrätä kyseisten sitoumusten noudattamisen yrityksiä velvoittavaksi. Päätös voidaan tehdä määräajaksi, ja siinä on todettava, ettei komission jatkotoimille ole enää perusteita. Ennen kuin komissio antaa asetuksen (EY) N:o 1/2003 9 artiklassa tarkoitetun päätöksen, se julkaisee saman asetuksen 27 artiklan 4 kohdan mukaisesti tiiviin yhteenvedon asiaan liittyvistä seikoista ja sitoumusten pääkohdat. Asianomaiset osapuolet voivat esittää huomautuksensa komission asettamassa määräajassa.

2. YHTEENVETO

2. Komissio esitti 6. kesäkuuta 2013 asetuksen (EY) N:o 1/2003 9 artiklan 1 kohdan mukaisesti ennakkoarvioinnin, joka oli osoitettu Deutsche Bahn AG:lle ja sen tytäryhtiöille DB Energie GmbH:lle (DB Energie), DB Mobility Logistics AG:lle, DB Fernverkehr AG:lle ja DB Schenker Rail Deutschland AG:lle ([2]).

3. Komissio epäili ennakkoarvioinnissaan, että DB-konserni on saattanut käyttää väärin määräävää asemaansa kuljetussähkövirran tarjonnan markkinoilla Saksassa veloittamalla kilpailijoiltaan kuljetussähkövirrasta hintoja, jotka muodostavat hintaruuvin rautateiden pitkän matkan henkilöliikenteen ja rahtiliikenteen markkinoilla SEUT-sopimuksen 102 artiklan vastaisesti.

4. Komissio katsoo alustavasti, että DB Energiellä on määräävä asema Saksassa toimiville rautatieyrityksille tarjottavan kuljetussähkövirran markkinoilla. Kuljetussähkövirta on rautatieyrityksille välttämätön tuotantopanos, jotta ne voivat kilpailla Saksan rautatieliikenteen markkinoilla. DB Energie on vuodesta 2003 markkinoinut kuljetussähkövirtaa rautatieyrityksille kokonaistarjouksella, joka kattaa sekä kulutetun sähkön hinnan, jäljempänä 'sähkön hinta', että kuljetussähkövirtaverkon käytöstä perittävän hinnan, jäljempänä 'verkkomaksu'.

5. Komissio katsoi ennakkoarvioinnissaan, että tällainen hinnoittelujärjestelmä ja erityisesti siihen liittyvät alennukset, jotka toivat DB-konserniin kuuluville rautatieliikenteen harjoittajille enemmän etua kuin niiden kilpailijoille, ovat saattaneet haitata kilpailun kehitystä rautateiden pitkän matkan henkilöliikenteen ja rahtiliikenteen markkinoilla. Komissio epäilee, että DB Energien käyttämä kuljetussähkövirran

([1]) EYVL L 1, 4.1.2003, s. 1. EY:n perustamissopimuksen 81 artiklasta tuli 1. joulukuuta 2009 Euroopan unionin toiminnasta tehdyn sopimuksen (SEUT-sopimuksen) 101 artikla ja 82 artiklasta SEUT-sopimuksen 102 artikla. Kyseisten artiklojen määräykset ovat asiasisällöltään samat. Viittauksia SEUT-sopimuksen 101 ja 102 artiklaan on tässä tiedonannossa pidettävä soveltuvin osin viittauksina EY:n perustamissopimuksen 81 ja 82 artiklaan.

([2]) Deutsche Bahn AG:hen ja kaikkiin sen tytäryhtiöihin viitataan jäljempänä ilmaisulla 'DB-konserni'.

nykyinen hinnoittelujärjestelmä saattaa aiheuttaa näillä markkinoilla kilpailijoilta perittävän kuljetussähkövirran hinnan ja DB:n kuljetusyritysten tarjoamien rautatieliikenteen palvelujen kuluttajilta perittävän hinnan välille eron, joka estää niiden yhtä tehokkaita kilpailijoita saavuttamasta toiminnallaan voittoa tai kaventaa niiden voittomarginaalia keinotekoisesti. Komissio katsoi alustavassa tutkimuksessaan, että tilanteeseen saattaa liittyä kilpailuongelmia rautateiden pitkän matkan henkilöliikenteen ja rahtiliikenteen markkinoilla.

6. Saksan liittovaltion tuomioistuin katsoi marraskuussa 2010, että kuljetussähkövirtaverkkoa olisi pidettävä energiaverkkona ja että tähän verkkoon pääsyä koskevia edellytyksiä ja siitä perittäviä maksuja olisi säänneltävä Saksan energiasektoria koskevalla lailla ((*Energiewirtschaftsgesetz* — EnWG) ([1]). Tämän vuoksi DB Energien olisi veloitettava verkkomaksu erikseen, niin että kolmannet sähköntoimittajat (jotka eivät kuulu DB-konserniin) voivat kilpailla DB Energien kanssa sähkön tarjoamisesta rautatieyrityksille ([2]).

3. TARJOTTUJEN SITOUMUSTEN PÄÄSISÄLTÖ

7. DB Energie ei ole yhtä mieltä komission ennakkoarvioinnista, jonka mukaan se olisi käyttänyt väärin määräävää asemaansa Saksan rautatieyritysten kuljetussähkövirran tarjonnan markkinoilla. Se on kuitenkin esittänyt asetuksen (EY) N:o 1/2003 9 artiklan mukaisesti sitoumuksia, joilla komission havaitsemat kilpailuongelmat voidaan ratkaista. Sitoumusten keskeiset kohdat esitetään jäljempänä.

8. DB Energie ottaa käyttöön kuljetussähkövirran uuden hinnoittelujärjestelmän, jossa sähkön hinta ja verkkomaksu on erotettu toisistaan toimivaltaisen Saksan sääntelyviranomaisen (*Bundesnetzagentur*) hyväksymällä tavalla, viimeistään kolme kuukautta sen jälkeen kun komission päätös, jolla nämä sitoumukset tehdään DB-konsernia sitoviksi, on annettu tiedoksi, ja aikaisintaan 1 päivänä tammikuuta 2014. Uusi hinnoittelujärjestelmä on suunniteltu niin, että se takaa kolmansille sähköntoimittajille pääsyn rautatieyrityksille suunnatuille sähköntarjontamarkkinoille ([3]).

9. Uuden järjestelmän mukaan DB Energie perii sähköstä saman hinnan kaikilta rautatieyrityksiltä ilman toimitusten määrään tai kestoon perustuvia alennuksia.

10. DB Energie maksaa DB-konsernin ulkopuolisille Saksan rautatieyrityksille takautuvasti kertaluonteisen palautuksen, jonka määrä on 4 prosenttia niiden kuljetussähkövirtalaskusta yhden vuoden ajalta ennen uuden hinnoittelujärjestelmän voimaantuloa.

11. DB Energie ja DB Mobility Logistics AG toimittavat komissiolle vuosittain tiedot, joiden perusteella arvioidaan, voivatko DB-konsernin kuljetussähkövirrasta ja kuljetuspalveluista perimät hinnat muodostaa hintaruuvin. DB Energie antaa komissiolle etukäteen tiedoksi myös kaikki sähkönhinnan muutokset.

12. Sitoumukset tulevat voimaan viimeistään kolme kuukautta sen jälkeen kun komission päätös on annettu tiedoksi. Ne ovat voimassa viisi vuotta ([4]) komission päätöksen tiedoksiantamisen jälkeen tai kunnes 20 prosenttia DB-konsernin kilpailijoiden ostamasta kuljetussähkövirran määrästä on peräisin kolmansilta sähköntoimittajilta. DB-konserni nimittää toimitsijamiehen valvomaan näiden sitoumusten noudattamista.

13. Sitoumukset julkaistaan kilpailun pääosaston verkkosivuilla osoitteessa http://ec.europa.eu/competition/index_en.html

([1]) *Bundesgerichtshof*, asia *EnVR 1/10*, tuomio 9. marraskuuta 2010.

([2]) Lisätietoja hinnoittelujärjestelmän muutoksesta ja uuden järjestelmän ehdoista on saatavilla DB Energien verkkosivustolla (vain saksaksi): http://www.dbenergie.de/dbenergie-de/netzbetreiber/netzbetreiber_bahnstromnetz/2500898/bahnstromnetz_konsultation.html

([3]) Uuden järjestelmän käyttöönottoa täydennetään velvoitteella, jonka mukaan DB Energien on kirjanpito- ja tietojärjestelmissään erotettava toisistaan yhtäältä kuljetussähkövirtaverkon hallinnointiin ja toisaalta sähköntoimittamiseen liittyvät toiminnot.

([4]) DB Energien sitoumus olla myöntämättä sähköntoimituksista kestoon perustuvia alennuksia on voimassa vain kolme vuotta.

4. **HUOMAUTUSPYYNTÖ**

14. Jollei markkinatestin tuloksista muuta johdu, komissio aikoo antaa asetuksen (EY) N:o 1/2003 9 artiklan 1 kohdan mukaisen päätöksen, jossa edellä yhteenvetona ja kilpailun pääosaston verkkosivustolla lyhentämättöminä esitetyt sitoumukset todetaan sitoviksi.

15. Komissio pyytää asetuksen (EY) N:o 1/2003 27 artiklan 4 kohdan mukaisesti asianomaisia kolmansia osapuolia esittämään huomautuksensa ehdotetuista sitoumuksista. Huomausten on oltava komissiolla kuukauden kuluessa tämän tiedonannon julkaisupäivästä. Asianomaisia kolmansia osapuolia pyydetään toimittamaan huomautuksistaan myös julkinen toisinto, josta tiedot, jotka ne katsovat liikesalaisuuksiksi, ja muut luottamukselliset tiedot on poistettu ja korvattu vaatimusten mukaisesti yhteenvedolla, joka ei sisällä luottamuksellisia tietoja, tai merkinnällä ”liikesalaisuus” tai ”luottamuksellinen tieto”. Väitteet tietojen luottamuksellisuudesta on asetuksen (EY) N:o 773/2004 16 artiklan mukaisesti perusteltava asianmukaisesti, esimerkiksi esittämällä syyt, joiden vuoksi kyseisten tietojen paljastaminen voisi aiheuttaa vakavaa haittaa.

16. Vastausten ja huomautusten olisi mieluiten oltava perusteltuja, ja niissä olisi esitettävä kaikki olennaiset tosiseikat. Jos havaitsette johonkin ehdotettujen sitoumusten osa-alueeseen liittyvän ongelman, komissio pyytää teitä ehdottamaan mahdollista ratkaisua.

17. Huomautukset voidaan lähettää komissiolle viitteellä AT.39678/AT.39731/AT.39915 Deutsche Bahn I/II/III sähköpostitse (COMP-GREFFE-ANTITRUST@ec.europa.eu), faksilla (+32 22950128) tai postitse seuraavaan osoitteeseen:

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

MUUT SÄÄDÖKSET

EUROOPAN KOMISSIO

Maataloustuotteiden ja elintarvikkeiden laatujärjestelmistä annetun Euroopan parlamentin ja neuvoston asetuksen (EU) N:o 1151/2012 50 artiklan 2 kohdan a alakohdassa tarkoitettu hakemuksen julkaiseminen

(2013/C 237/06)

Tämä julkaiseminen antaa oikeuden vastustaa hakemusta Euroopan parlamentin ja neuvoston asetuksen (EU) N:o 1151/2012 [1] 51 artiklassa tarkoitetulla tavalla.

YHTENÄINEN ASIAKIRJA

Maataloustuotteiden ja elintarvikkeiden maantieteellisten merkintöjen ja alkuperänimitysten suojasta annettu

NEUVOSTON ASETUS (EY) N:o 510/2006 [2]

”SZENTESI PAPRIKA”

EY-N:o HU-PGI-0005-0912-30.11.2011

SMM (X) SAN ( )

1. **Nimi**

”Szentesi paprika”

2. **Jäsenvaltio tai kolmas maa**

Unkari

3. **Maataloustuotteen tai elintarvikkeen kuvaus**

3.1 *Tuotelaji*

Luokka 1.6: Hedelmät, vihannekset ja viljat sellaisenaan tai jalostettuina

3.2 *Kuvaus 1 kohdassa nimetystä tuotteesta*

Suojatulla maantieteellisellä merkinnällä ”Szentesi paprika” tarkoitetaan jäljempänä mainittuihin *Capsicum annuum* -lajiketyyppeihin kuuluvia lajikkeita hyötämällä saatuja paprikoita.

Kaupan pidettyjen Szentesi-paprikoiden on oltava eheitä ja terveitä, ja kaikilla lajiketyypeillä on oltava seuraavat ominaisuudet.

a) Valkoinen täytettävä paprika (*Capsicum annuum* L. var. *grossum*)

[1] EUVL L 343, 14.12.2012, s. 1.
[2] Korvattu asetuksella (EU) N:o 1151/2012.

Valkoinen Szentesi-paprika tuntuu kypsänä kosketettaessa liukkaalta, ja sen kuori on sileä ja luistava. Paprika on kärjestään tylppä ja kokoon taittunut. Hedelmäliha on paksu ja napsahtaa, kun paprikan taitaa. Paprikan pinta on tasainen ja väriltään kellanvalkoinen (luunvalkoinen). Paprika on kartiomainen, ja sen pituus on 60–120 mm ja leveys 40–70 mm. Paprikan sisällä on yleensä kolme tai neljä lohkoa. Hedelmäliha on kiinteää ja paksuudeltaan 4–7 mm. Kuori on ohut. Paprika on mehukas ja mieto, aromiltaan intensiivisen paprikamainen.

Viljellyt lajikkeet: Hó, Cibere, Century, Hurricane, Bronson, Emese, Kurca, Creta, Joker, Karma, Bravia (RZ35862), Kalota, Brendon, Antal, Zalkod, Censor, Celtic, Cinema, Glorietta, Dimentio, E-49.39615, Galga, Claudius ja Skytia.

b) Suippokärkinen tulinen paprika (*Capsicum annuum* L. var. *longum*)

Suippokärkisen tulisen Szentesi-paprikan pinta on kiiltävä, tasainen tai hieman aaltoileva. Paprika on muodoltaan pitkä ja suippokärkinen. Väriltään se on vaalean-, keskivaalean- tai tummanvihreä. Paprikan pituus on 150–250 mm ja leveys 20–50 mm. Paprikan sisällä on yleensä kolme tai neljä lohkoa. Hedelmäliha on kiinteää ja paksuudeltaan 3–4 mm. Kuori on ohut. Paprika on maukas ja aromiltaan intensiivisen paprikamainen, tulinen ja miellyttävä.

Viljellyt lajikkeet: Daras, Rush, Sarah, Fighter, Kard, Thunder ja Kais.

Viljeltyjen lajikkeiden tulisuus on Scoville-asteikolla 2 500–5 000.

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

Kápia-ryhmään kuuluva Szentesi-paprika on kartiomainen ja hieman litteä. Paprikan pinta on tasainen ja kiiltävä, ja väriltään paprika on kypsänä tumman sametinpunainen. Paprikan pituus on 60–120 mm ja leveys 40–70 mm. Paprikassa on yleensä kaksi tai kolme lohkoa. Hedelmäliha on kiinteää ja paksuudeltaan 4–7 mm. Kuoren paksuus on keskitasoa. Paprika on hyvin makea ja mieto. Tuoksu muistuttaa jauhettua paprikaa.

Viljellyt lajikkeet: Kárpia (T 112), Kapirex, Karpex ja Mágus.

d) Tomaattipaprika (*Capsicum annuum* L. var. *grossum*)

Szentesi-tomaattipaprika on muodoltaan hyvin erityinen: litistetyn pallomainen, pinnaltaan tasainen ja kiiltävä, ja kypsänä väriltään syvän punainen. Halkaisija on 60–120 mm, pituus 40–60 mm, ja lohkoja on kolme tai neljä. Hedelmäliha on kiinteää ja paksuudeltaan 5–7 mm, kuori on ohut, aromi voimakkaan paprikamainen ja maku mieto.

Viljellyt lajikkeet: Pritavit, Kabala ja Bihar.

Vuosittain voidaan valita, mitä edellä mainituissa lajiketyypeissä luetelluista lajikkeista viljellään.

3.3 *Raaka-aineet (ainoastaan jalostetut tuotteet)*

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3.4 *Rehu (ainoastaan eläinperäiset tuotteet)*

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3.5 *Erityiset tuotantovaiheet, joiden on tapahduttava yksilöidyllä maantieteellisellä alueella*

Kaikkien Szentesi-paprikan tuotantovaiheiden on tapahduttava 4 kohdassa määritellyllä maantieteellisellä alueella:

— paprikantaimien tuotanto ja kasvatus,

— kunkin lajiketyypin ja lajikkeen integroitu luonnonmukainen viljely, johon sisältyvät seuraavat:

— viljelykauden valinta,

— viljelyalan perustaminen,

— maanmuokkaus ja lannoitus,

— istutus,

— tukikeppien valmistus,

— kasvien hoitaminen,

— kastelu ja ravintoaineiden antaminen,

— ilmastoinnin sääntely,

— ympäristöä säästävien integroitujen kasvinsuojelumenetelmien soveltaminen,

— sadonkorjuu, tuotteiden käsittely, esivarastointi ja varastointi,

— paprikatähteiden poiskeruu, viljelylaitteiston puhdistus ja desinfiointi.

3.6 *Viipalointia, raastamista, pakkaamista jne. koskevat erityiset säännöt*

Szentesi-paprikan luokittelu, pakkaus ja merkintä tapahtuvat määritellyllä maantieteellisellä alueella joko viljelijän luona tai missä tahansa muussa tähän tarkoitukseen soveltuvassa laitoksessa.

Kappalemääräisesti: rasia, kori, polyeteenisäkki (3, 5, 20, 30, 40, 50, 60 tai 80 paprikaa/yksikkö); painon mukaan: kori, raschel-verkkosäkki (0,35, 0,5, 0,7, 1 tai 2 kg paprikaa/yksikkö); pahvilaatikko: M10-, M20- tai M30-pakkauksissa (2,5, 10, 12 tai 14 kg paprikaa/yksikkö). Kunkin lajiketyypin pakkaustapa voidaan valita kaupanpitoon liittyvien vaatimusten mukaan.

Tuotteet on pakattava määritellyllä maantieteellisellä alueella, jotta varmistetaan kuhunkin lajiketyyppiin ja niiden sisältämiin lajikkeisiin kuuluvien ”Szentesi paprika” -SMM-merkinnän saaneiden paprikoiden laatu, homogeenisuus ja tyypillinen maku, tuoksu- ja makuominaisuudet, koostumus ja virheettömyys sekä tuotteiden jäljitettävyys.

3.7 *Merkintöjä koskevat erityiset säännöt*

— Pakkauksessa on oltava ilmaisu ”Szentesi paprika”.

— Pakkauksessa on oltava Szentesi-paprikan jäljityksen mahdollistava viivakoodilappu.

4. **Maantieteellisen alueen tarkka rajaus**

Suojatun maantieteellisen merkinnän saanutta Szentesi-paprikaa viljellään Csongrádin läänissä sijaitsevalla yhtenäisellä alueella.

Szentesi-paprikaa viljellään Csongrádin läänissä seuraavissa kunnissa: Derekegyháza, Fábiánsebestyén, Felgyő, Mindszent, Nagymágocs, Nagytőke, Szegvár ja Szentes.

5. **Yhteys maantieteelliseen alueeseen**

5.1 *Maantieteellisen alueen erityisyys*

Laadukkaaseen paprikanviljelyyn vaikuttavat tekijät, erityisesti lämpötila- ja valo-olosuhteet sekä maaperään ja hydrografiaan liittyvät tekijät, ovat luoneet suotuisat olosuhteet viljellä paprikaa Szentesin alueella keinokastelemalla. Viljely alkoi 1800-luvun jälkipuoliskolla, kun seutukunnalle perustettiin kauppapuutarhoja (vihannespuutarhoja, joissa harjoitettiin pienimuotoista viljelyä erityismenetelmin hyötölavoilla ja keinokastelemalla).

Szentesin viljelyalue sijaitsee Kaakkois-Unkarissa, yhdessä Suuren tasangon syvimmistä laaksoista. Pinnanmuodostuksen näkökulmasta sijaintipaikka on erityinen, sillä alue on Unkarin alavinta. Pinnanmuodostus viettää kolmelta suunnalta naapurilääneistä asti alas kohti Tiszan laaksoa. Alueen hydrografisen järjestelmän tärkein vesistö on Tisza, joka määrittää koko luonnonmaantieteen muodon. Koska alueella on paljon pintavettä, vallitsevana maatyyppinä on karbonaatti- ja alkalipitoinen mustan mullan

niittymaa. Viljelyalueen maaperä on hyvässä fyysisessä kunnossa, kevyttä ja hieman emäksistä ja lämpenee helposti. Sillä on hyvä vesi- ja ravinnetalous ja humuspitoisuus, ja pintamaa on paksua.

Szentesi-paprikan viljelyn aikana paprikan ravintoarvoihin vaikuttavien ilmastotekijöiden joukossa ovat yhtäältä valon ja auringonvalon määrä ja toisaalta lämpötila ja -summa. Szentesin viljelyalueella vallitsee ennen kaikkea mannerilmasto. Aurinkotuntien määrä jakautuu alueella tasaisesti. Auringonvaloa saadaan vuodessa keskimäärin 2 050 tuntia. Kun ajatellaan viljelyalueen vuotuista keskilämpöä, alue kuuluu Unkarin lämpimimpiin. Vuotuinen keskilämpötila on + 10–11°C, ja kasvukauden lämpösumma on 3 200–3 300 °C, mikä on lämpöä tarvitsevan paprikanviljelyn kannalta erittäin suotuisaa.

Vuotuinen sademäärä on alueella Unkarin pienimpiä, keskimäärin 500–550 mm. Sateet jakautuvat siten, että talvisin saadaan sateesta 40 prosenttia, kesäisin 60 prosenttia. Paljon vettä tarvitsevan paprikanviljelyn ovat mahdollistaneet suotuisat hydrografiset tekijät ja keinokastelu, jota kauppapuutarhoissa ryhdyttiin harjoittamaan.

5.2 *Tuotteen erityisyys*

Määritellyltä maantieteelliseltä alueelta peräisin olevalla Szentesi-paprikalla on seuraavat keskeiset aistinvaraiset ominaisuudet: poikkeuksellisen mehukas, mausteinen, mieto tai tulinen maku; voimakkaan paprikamainen tai jauhettua paprikaa muistuttava aromi; ohut kuori. Paprikan hedelmälihan paksuus on 3–7 mm, minkä ansiosta lähinnä tuoreena syödyn paprikan mausta ja aromista voi nauttia täysimääräisesti.

Valkoinen Szentesi-paprika: Pinta tuntuu kypsänä kosketettaessa liukkaalta, ja kuori on sileä ja luistava. Paprika on kärjestään tylppä ja kokoon taittunut. Hedelmäliha on paksu ja napsahtaa, kun paprikan taitaa. Tuoreen paprikan aromi ja mehukkuus ovat niin luonteenomaisia, että kuluttajien keskuudessa on syntynyt kansanomainen sanonta: ”Szentesi-paprika on maukasta”.

Suippokärkisen tulisen Szentesi-paprikan pinta on kiiltävä, tasainen tai hieman aaltoileva. Muoto on suippokärkinen ja pitkänomainen. Hedelmäliha on kiinteää. Aromi on voimakkaan paprikamainen, tulinen ja miellyttävä, ja paprika on maukas. Kápia-ryhmään kuuluva Szentesi-paprika on hieman litteän kartiomainen. Hedelmäliha on kiinteää. Kuoren paksuus on keskitasoa. Pinta on tasainen ja kiiltävä. Maantieteellisen alueen vaikutuksesta (valo, lämpö) paprika saa tumman sametinpunaisen, houkuttelevan värin.

Szentesi-tomaattipaprika on muodoltaan hyvin erityinen, sillä se on litistetyn pallomainen. Vaikka hedelmäliha on paksua, kuori on ohut. Pinta on tasainen. Paprika on kypsänä väriltään syvän punainen.

5.3 *Syy-seuraussuhde, joka yhdistää maantieteellisen alueen seuraaviin: tuotteen laatu tai ominaisuudet (kun kyseessä SAN) tai tuotteen erityislaatu, maine tai muut ominaisuudet (kun kyseessä SMM)*

Yhteys maantieteelliseen alkuperään perustuu tuotteen perinteiseen maineeseen ja Szentesi-paprikan viljelijöiden keskuudessa sukupolvelta toiselle periytyneeseen paikalliseen taitotietoon.

Szentesi-paprikan maine

Szentesin alueella alettiin viljellä paprikaa keinokastelemalla 1800-luvun jälkipuolella, kun bulgarialaiset puutarhurit ryhtyivät perustamaan alueelle kauppapuutarhoja. Kuuluisaa Szentes-paprikaa onkin viljelty tauotta siitä lähtien. Tuote on edelleen tunnettu. Tästä on osoituksena pääpalkinto vuonna 2006 Debrecenissä järjestetyillä, puutarha-alaa esittelevillä maatalousmessuilla, joihin osallistui 300 koti- ja ulkomaista yritystä. Tuoreena syötävä paprika voitti puolestaan unkarilaisten tuotteiden pääpalkinnon (Magyar Termék Nagydíj) vuonna 2007.

Lukuisat historialliset seikat osoittavat, että Szentesi-paprikan maine ja asianomainen alue ovat jo vuosisatoja olleet toisiinsa sidoksissa. Paprikaa ryhdyttiin ensimmäistä kertaa viljelemään Szegvárin Úsztatón kauppapuutarhoissa talvella 1875–1876. Vuoden 1895 suuren maatalouslaskennan mukaan koko maan paprikanviljelystä 92,74 prosenttia oli keskittynyt maan kaakkoisosaan, Szentesin alueelle. Puutarhurit vuokrasivat nykyisen Csongrádin läänin alueella sijaitsevia humuspitoisia ja helposti lämpeneviä mustan mullan niittymaita ja tulvamaita. Mahdollisuuksien mukaan he valitsivat hieman viettäviä maita. Aikaisen sadon saamiseksi käytettiin idätettyjä siemeniä ja hyötölavoja. Kasvatuslavoilla harjoitettiin sekaviljelyä, esimerkiksi yhtä aikaa viljeltiin paprikaa ja kurkkua, joka jäi kasvamaan, kun

paprika oli uudelleenistutettu. Kasvit uudelleenistutettiin pienen multapaakun kanssa. Kastelu oli runsasta ja säännöllistä: kastelussa käytettiin joko lämmintä seisonutta vettä tai matalien jokien hidasjuoksuista vettä. Viljelijöillä oli erityinen vedenkeruu- ja kastelumenetelmä. Szentesin alueella vesi nostettiin tuohon aikaan käsin ämpärillä eli veden pinnan vaihtelu ei haitannut.

Paikallinen taitotieto

Szentesin viljelyalueella maaperä pidättää hyvin lämpöä. Koska maaperä, jolla Szentesi-paprikaa viljellään, imee itseensä enemmän lämpöä kuin se aamuvarhaisella luovuttaa, maaperään ja sen yläpuoliseen ilmaan varastoitunut lämpö leviää ja nostaa siten lämpötilaa. Harmonisten lämpöolosuhteiden aikaansaama mikroilmasto ja kauppapuutarhureiden aloittama keinokastelu johtavat yhdessä siihen, että paljon lämpöä ja vettä vaativasta Szentesi-paprikasta kasvaa poikkeuksellisen mehukas.

Luontoon liittyvien tekijöiden lisänä tulee paikallisten työntekijöiden työpanos ja hyötämisestä saatu käytännön kokemus (lämmönsäätely, ilmanvaihto, suojaus, kasvinhoito), joka on periytynyt sukupolvelta toiselle. Näin kertynyt asiantuntemus on tasapainottanut viime vuosikymmenten aikana äärimmäisten sääolojen epäsuotuisia vaikutuksia, ja se varmistaa mahdollisimman hyvin Szentesi-paprikan maun, värin, mehukkuuden ja kullekin lajiketyypille ominaisen miellyttävän muodon.

Kauppapuutarhureiden kehittämä viljelytekniikka on 150 vuoden aikana sopeutunut aikakauden vaatimuksiin. Paprikanviljelyyn olennaisesti liittyviä tekijöitä on arvioitu uudelleen vuosien kuluessa ja uusia viljelytapoja on otettu käyttöön. Paprikanviljelyn alkuajoista aina 1960-luvulle saakka tärkeimpiä viljelyyn liittyviä tekijöitä olivat maaperän hyvä kunto, mahdollisuus keinokasteluun (Tisza, Körös ja kastelukanavajärjestelmä), auringonpaisteen määrä (mahdollisuus varhaisviljelyyn) sekä varhainen lämpeneminen keväällä. Seuraava ajanjakso kesti 1960-luvun lopulta 1980-luvun loppuun. Paprikanviljelijät hyödynsivät aikaista lämpenemistä ja talvi- ja kevätkuukausien runsasta auringonvalon määrää optimaalisesti ja siirtyivät kasvihuoneviljelyyn. Szentesi-paprikan viljely siirtyi 1960–1980-luvuilla alueella löydetyn maalämmön vaikutuksesta peltoviljelystä kasvihuoneviljelyyn, jossa muut viljelytavat kuin multaviljely ovat lisääntymässä.

Eritelmän julkaisutiedot

(Asetuksen (EY) N:o 510/2006 5 artiklan 7 kohta ([3]))

Maaseudun kehittämisen tiedotuslehti (Vidékfejlesztési Értesítő), 16.11.2011, LXI. vuosi, nro 6, s. 317.

http://elelmiszerlanc.kormany.hu/minosegpolitika

([3]) Katso alaviite 2.

Maataloustuotteiden ja elintarvikkeiden laatujärjestelmistä annetun Euroopan parlamentin ja neuvoston asetuksen (EU) N:o 1151/2012 50 artiklan 2 kohdan a alakohdassa tarkoitettu muutoshakemuksen julkaiseminen

(2013/C 237/07)

Tämä julkaiseminen antaa oikeuden vastustaa muutoshakemusta Euroopan parlamentin ja neuvoston asetuksen (EU) N:o 1151/2012 [1] 51 artiklassa tarkoitetulla tavalla.

MUUTOSHAKEMUS

Maataloustuotteiden ja elintarvikkeiden maantieteellisten merkintöjen ja alkuperänimitysten suojasta annettu

NEUVOSTON ASETUS (EY) N:o 510/2006 [2]

9 ARTIKLASSA TARKOITETTU MUUTOSHAKEMUS

”TERRA D’OTRANTO”

EY-N:o: IT-PDO-0117-1519-01.03.2011

SMM ( ) SAN (X)

1. **Eritelmän kohta (kohdat), jota (joita) muutos koskee**

— ☐ Tuotteen nimi

— ☒ Tuotteen kuvaus

— ☐ Maantieteellinen alue

— ☒ Alkuperätodisteet

— ☐ Tuotantomenetelmä

— ☐ Yhteys maantieteelliseen alkuperään

— ☐ Merkinnät

— ☒ Kansalliset vaatimukset

— ☒ Muuta (täsmennettävä)

2. **Muutoksen (muutosten) tyyppi**

— ☐ Yhtenäisen asiakirjan tai yhteenvedon muutos

— ☒ Rekisteröidyn SAN:n tai SMM:n eritelmän muutos, kun yhtenäistä asiakirjaa tai yhteenvetoa ei ole julkaistu

— ☐ Eritelmän muutos, joka ei edellytä julkaistun yhtenäisen asiakirjan muutosta (asetuksen (EY) N:o 510/2006 9 artiklan 3 kohta)

— ☐ Eritelmän väliaikainen muutos, joka johtuu viranomaisten asettamista pakollisista terveys- tai kasvinsuojelutoimista (asetuksen (EY) N:o 510/2006 9 artiklan 4 kohta)

[1] EUVL L 343, 14.12.2012, s. 1.
[2] Korvattu asetuksella (EU) N:o 1151/2012.

3. **Muutos (muutokset)**

3.1. *Tuotteen kuvaus*

Tuotantoeritelmää muutetaan lisäämällä tyypillisten ominaisuuksien mediaanit, minkä vuoksi arvo 6,5 poistetaan tarpeettomana, sekä menetelmään COI/T20 Doc. n° 22 sisältyvät määräykset. Aistinvaraiseen analyysiin on lisätty eräitä täsmennyksiä, jotka liittyvät jommankumman kotoperäisen lajikkeen ensisijaiseen esiintymiseen.

Uuden menetelmän soveltamisen myötä kuvaus muuttuu seuraavasti:

— väri: vihreä tai hennosti vihreään vivahtava keltainen;

— tuoksu: keskimääräisen hedelmäinen (ominaisuuden mediaani 3–6) kypsän oliivin tuoksu, jossa on aistittavissa häivähdys lehteä;

— maku: keskimääräisen hedelmäinen (ominaisuuden mediaani 3–6) kypsän oliivin maku. Keskimääräinen tai kevyt pistävän karvas vivahde sadonkorjuuajankohdasta riippuen (näiden ominaisuuksien mediaani yli 0 ja enintään 6). Lisäksi sadonkorjuuajankohdasta ja hallitsevasta lajikkeesta riippuen hedelmäisyyteen yhdistyvät oliivipuun lehtien, vastaniitetyn heinän, kardonin, artisokan tai sikurin (ogliarola-lajikkeella) taikka hedelmien, tomaatin tai metsämarjojen (cellina-lajikkeella) vivahteet.

Kemiallisia ominaisuuksia on muutettu hieman alentamalla öljyhappona ilmaistua kokonaishappopitoisuutta enintään 0,8:sta nykyiseen enintään 0,65:een sekä korottamalla linoleenihappopitoisuutta enintään 0,70:stä enintään 0,8:aan ja K232-arvoa enintään 2,10:stä enintään 2,20:een. Nämä muutokset johtuvat siitä, että halutaan lisätä kahden maantieteellisellä alueella yleisimpinä esiintyvän lajikkeen (Cellina di Nardò ja Ogliarola Salentina) edustavuutta, joka vaikuttaa siihen, että aiemmin hyvin harvinaisten yhdestä lajikkeesta saatujen öljyjen linoleenihappopitoisuus ja K232-arvo ovat hieman erilaiset.

3.2. *Alkuperätodisteet*

Eritelmää on mukautettu asetuksen (EY) N:o 1898/2006 säännöksiin sisällyttämällä siihen toimijoilta edellytetyt menettelyt alkuperätodisteiden esittämiseksi.

3.3. *Kansalliset vaatimukset*

Helmikuun 15. päivänä 1992 annetussa laissa nro 169 (Disciplina per il riconoscimento della denominazione di origine controllata degli oli di oliva vergini ed extravergini) ja ministeriön asetuksessa nro 573/93 säädetyt velvoitteet on poistettu.

3.4. *Muuta*

Muutoksia ehdottava organisaatio on Consorzio di tutela dell'olio extra vergine di oliva Terra d'Otranto, joka on valtuutettu esittämään muutoshakemuksen. Se on perustettu alkuperäisen SAN-rekisteröintihakemuksen esittämisen jälkeen. Aiemmin tuotetta edustanut ryhmittymä oli APROL, jossa oli mukana edustajia vähintään seitsemästä oliiviöljyntuottajayhdistyksestä.

YHTENÄINEN ASIAKIRJA

Maataloustuotteiden ja elintarvikkeiden maantieteellisten merkintöjen ja alkuperänimitysten suojasta annettu

NEUVOSTON ASETUS (EY) N:o 510/2006 [3]

"TERRA D'OTRANTO"

EY-N:o: IT-PDO-0117-1519-01.03.2011

SMM ( ) SAN (X)

1. **Nimi**

"Terra d'Otranto"

2. **Jäsenvaltio tai kolmas maa**

Italia

[3] Katso alaviite 2.

3. **Maataloustuotteen tai elintarvikkeen kuvaus**

3.1. *Tuotelaji*

Luokka 1.5 – Rasvat (voi, margariini, öljyt jne.)

3.2. *Kuvaus 1 kohdassa nimetystä tuotteesta*

Terra d'Otranto on ekstra-neitsytoliiviöljy, jolla on seuraavat kemialliset ja aistinvaraiset ominaisuudet:

— enimmäishappopitoisuus 0,65%;

— peroksidiluku ≤ 14 MeqO2/kg;

— K232 ≤ 2,20

— K270 ≤ 0,170

— linoleenihappopitoisuus ≤ 0,8

— väri: vihreä tai hennosti vihreään vivahtava keltainen;

— tuoksu: keskimääräisen hedelmäinen (ominaisuuden mediaani 3–6) kypsän oliivin tuoksu, jossa on aistittavissa häivähdys lehteä;

— maku: keskimääräisen hedelmäinen (ominaisuuden mediaani 3–6) kypsän oliivin maku.

Keskimääräinen tai kevyt pistävän karvas vivahde sadonkorjuuajankohdasta riippuen (näiden ominaisuuksien mediaani yli 0 ja enintään 6). Lisäksi sadonkorjuuajankohdasta ja hallitsevasta lajikkeesta riippuen hedelmäisyyteen yhdistyvät oliivipuun lehtien, vastaniitetyn heinän, kardonin, artisokan tai sikurin (*ogliarola*-lajikkeella) taikka hedelmien, tomaatin tai metsämarjojen (*cellina*-lajikkeella) vivahteet.

3.3. *Raaka-aineet (ainoastaan jalostetut tuotteet)*

—

3.4. *Rehu (ainoastaan eläinperäiset tuotteet)*

—

3.5. *Erityiset tuotantovaiheet, joiden on tapahduttava yksilöidyllä maantieteellisellä alueella*

Terra d'Otranto -ekstra-neitsytoliiviöljyn tuotantoon tarkoitetut oliivit on viljeltävä, jalostettava ja puristettava yksinomaan 4 kohdassa yksilöidyllä maantieteellisellä tuotantoalueella.

3.6. *Viipalointia, raastamista, pakkaamista jne. koskevat erityiset säännöt*

Terra d'Otranto -ekstra-neitsytoliiviöljy on saatettava kulutukseen lasista tai pinnoitetusta pellistä valmistetuissa astioissa, joiden vetoisuus on enintään 5 litraa. Öljy on pakattava maantieteellisellä tuotantoalueella, jotta voidaan taata tuotteen alkuperän valvonta ja estää öljyn kuljetuksesta kyseisen alueen ulkopuolelle mahdollisesti aiheutuva laadun heikkeneminen ja edellä 3.2 kohdassa määriteltyjen erityisominaisuuksien ja erityisesti Terra d'Otranto -oliiviöljylle tyypillisten kardonin, artisokan ja sikurin vivahteiden häviäminen. Öljyn koostumukselle ominainen monityydyttymättömien rasvahappojen korkea pitoisuus johtaa helposti sen aistinvaraisen ominaislaadun heikkenemiseen ilman sisältämän hapen vaikutuksesta astiasta toiseen siirtämisen, pumppaamisen, kuljetuksen ja purkamisen aikana, koska nämä vaiheet toistuvat useammin, mikäli tuote pullotetaan alueen ulkopuolella.

3.7. *Merkintöjä koskevat erityiset säännöt*

Nimi ”Terra d'Otranto” on merkittävä etikettiin selkein lähtemättömin kirjaimin, jotka erottuvat selvästi kaikista muista etiketissä olevista teksteistä. Välittömästi nimen jälkeen on merkittävä maininta ”Denominazione di origine protetta” (suojattu alkuperänimitys) tai sen kirjainlyhenne DOP (SAN) sekä vastaava unionin tunnus.

Valvontasuunnitelman mukaisesti kaikki myyntiin saatettavat pakkaukset on varustettava pakkaajan merkitsemällä juoksevalla numerolla.

Muiden luonnehdintojen, kuten adjektiivien ”fine”, ”scelto”, ”selezionato”, ”superore” lisääminen on kielletty.

Viittaukset nimiin, toiminimiin tai yksityisiin tavaramerkkeihin ovat kuitenkin sallittuja, kunhan ne eivät ole mainostavia tai omiaan johtamaan kuluttajaa harhaan.

Etikettiin on merkittävä valmistukseen käytettyjen oliivien tuotantovuosi.

4. **Maantieteellisen alueen tarkka rajaus**

Suojatun alkuperänimityksen ”Terra d'Otranto” tuotantoalue käsittää Leccen maakunnan kokonaisuudessaan sekä osan Taranton ja Brindisin maakunnista. Joonianmeren ja Adrianmeren välissä sijaitseva alue muodostaa kaaren, joka ulottuu Murge Taratinen kukkuloilta Brindisin kukkuloiden kaakkoisrinteiden ja Leccen tasangon kautta Serren rinteille kahden meren yhtymäkohdassa.

5. **Yhteys maantieteelliseen alkuperään**

5.1. *Maantieteellisen alueen erityisyys*

Tuotteen erityisominaisuudet johtuvat maaperä- ja ilmasto-olosuhteista. Ympäristötekijät ja alueelle tyypilliset lajikkeet todella antavat Terra d'Otranto -oliiviöljylle omintakeisen luonteen. Yleisesti ottaen huomattavan yhtenäinen maaperä muodostuu liitukautisesta kalkkikivestä, jonka päällä on tertiäärikautisia kalkkikivikerrostumia sekä plioseeni- ja pleistoseenikautista kalkkikiven-, hiekan- ja savensekaista sedimenttiainesta, ja se on rusko- tai punamaata, joita esiintyy usein vuorottelevina kerroksina kalkkikivikallion päällä. Alueen pinnanmuodostukselle ovat ominaisia laajat, matalien loivien kukkuloiden rajaamat tai halkomat tasangot. Alueella ei ole pintavesistöjä, mutta veden maanalainen kulkeutuminen on runsasta, joten koko alue on tyypillistä karstimaata. Koska alue sijaitsee rannikolla lähellä merenpintaa, sen ilmasto on lauhkea ja usein melko kuuma.

5.2. *Tuotteen erityisyys*

Maantieteellisen alueen oliivinviljely perustuu erityisesti kahden kotoperäisen lajikkeen, Cellina di Nardò ja Ogliarola leccese, runsaaseen esiintymiseen, ja ne vaikuttavat myös tuotetun oliiviöljyn laatuun. Näiden lajikkeiden 60 %:n vähimmäisosuus ilmenee öljyn aistinvaraisissa ominaisuuksissa, joissa jommastakummasta pääasiallisesta lajikkeesta riippuen tuntuvat joko kardonin/artisokan/sikurin tai tomaatin/hedelmien/metsämarjojen vivahteet.

5.3. *Syy-seuraussuhde, joka yhdistää maantieteellisen alueen seuraaviin: tuotteen laatu tai ominaisuudet (kun kyseessä SAN) tai tuotteen erityislaatu, maine tai muut ominaisuudet (kun kyseessä SMM)*

Oliivinviljely on alueen tärkein tuotannonala, ja sen merkitys paikalliselle talouselämälle on ratkaisevan tärkeä. Vielä 1800-luvulla maantieteellisellä nimityksellä ”Terra d'Otranto” tarkoitettiin nykyisiä Leccen, Brindisin ja Taranton maakuntia. Oliivipuut ovat aina kuuluneet olennaisena osana alueen maisemaan, ja niiden hedelmistä puristettiin ”arvostettua nestettä”. Myös nimen ”Terra d'Otranto” alkuperä liittyy alueen oliivinviljelyn historiaan, joka alkoi jo ammoin foinikialais- ja kreikkalaissiirtokunnissa ja josta sittemmin kehittyivät alueelle 900-luvulla asettautuneiden basiliaanimunkkien työn tuloksena Terra d'Otrantosta peräisin olevan arvostetun oliiviöljyn kukoistavat markkinat. Terra d'Otranto on nimi, jota keskiajalla käytettiin Salenton niemimaasta, koska Otranto oli silloin koko alueen tärkein keskus.

Eritelmän julkaisutiedot

(Asetuksen (EY) N:o 510/2006 5 artiklan 7 kohta ([4]))

Italian hallitus on aloittanut kansallisen vastaväitemenettelyn julkaisemalla 21. joulukuuta 2010 *Italian tasavallan virallisen lehden* numerossa 297 ehdotuksen suojatun alkuperänimityksen ”Terra d'Otranto” eritelmän muuttamiseksi. Eritelmän täydellinen teksti on saatavissa internetosoitteessa

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

tai menemällä suoraan maatalous-, elintarvike- ja metsätalousministeriön kotisivulle (http://www.politicheagricole.it), valitsemalla ensin ”Qualità e sicurezza (ylhäällä oikealla) ja sen jälkeen ” Disciplinari di produzione all'esame dell'UE”.

([4]) Katso alaviite 2.

Maataloustuotteiden ja elintarvikkeiden laatujärjestelmistä annetun Euroopan parlamentin ja neuvoston asetuksen (EU) N:o 1151/2012 50 artiklan 2 kohdan b alakohdassa tarkoitettu hakemuksen julkaiseminen

(2013/C 237/08)

Tämä julkaiseminen antaa oikeuden vastustaa hakemusta neuvoston asetuksen (EU) N:o 1151/2012 [1] 51 artiklassa tarkoitetulla tavalla.

AITOA PERINTEISTÄ TUOTETTA KOSKEVA REKISTERÖINTIHAKEMUS

Maataloustuotteiden ja elintarvikkeiden rekisteröimisestä aidoiksi perinteisiksi tuotteiksi annettu

NEUVOSTON ASETUS (EY) N:o 509/2006 [2]

”ŽEMAITIŠKAS KASTINYS”

EY-N:o: LT-TSG-0007-0910-11.11.2011

1. **Hakijaryhmittymän nimi ja osoite**

Nimi (tarvittaessa): Žemaitiško kastinio gamintojai

Osoite: Sedos g. 35
LT-87101 Telšiai
LIETUVA/LITHUANIA

Tfn +370 44422201
Fax +370 44474897
Sähköposti: info@zpienas.lt

2. **Jäsenvaltio tai kolmas maa**

Liettua

3. **Tuote-eritelmä**

3.1. *Rekisteröitävä nimi/Rekisteröitävät nimet (asetuksen (EY) N:o 1216/2007 2 artikla)*

”Žemaitiškas kastinys”

3.2. *Nimi*

☒ on itsessään erityinen

☐ on maataloustuotteen tai elintarvikkeen erityisluonnetta ilmaiseva

Nimi ”Žemaitiškas kastinys” ei liity tuotteen erityisluonteeseen, mutta se on vakiintunut ja tunnetaan hyvin sekä Žemaitijan alueella (Liettuan länsiosassa) että kaikkialla Liettuassa viitattaessa perinteisesti kyseiseen tuotteeseen. Tämä käy ilmi useista 3.8 kohdassa mainituista lähteistä.

Nimi ”Žemaitiškas kastinys” mainitaan seuraavissa 1900-luvulla julkaistuissa keittokirjoissa: Gaspadinystės knyga arba Pamokinimai kaip prigulinčiai yra sutaisomi valgiai (Tilžė, 1927), Ką valgome (Dr. Tumėnienė *et al.*, Kaunas, 1935) ja Lietuvių valgiai (J. Pauliukonienė, Vilna, 1983).

3.3. *Asetuksen (EY) N:o 509/2006 13 artiklan 2 kohdan mukainen nimen varaaminen*

☒ Rekisteröintiin liittyy nimen varaaminen

☐ Rekisteröintiin ei liity nimen varaamista

3.4. *Tuotelaji (ks. liite II)*

Luokka 1.4 – Muut eläinperäiset tuotteet (munat, hunaja, maitotuotteet lukuun ottamatta voita jne.)

[1] EUVL L 343, 14.12.2012, s. 1.
[2] Korvattu asetuksella (EU) N:o 1151/2012.

3.5. *Sen maataloustuotteen tai elintarvikkeen kuvaus, johon 3.1 kohdan mukaista nimeä sovelletaan (asetuksen (EY) N:o 1216/2007 3 artiklan 1 kohta)*

”Žemaitiškas kastinys” on perinteinen tuote, joka valmistetaan hapankermasta kuumentamalla, sekoittamalla ja sen jälkeen jäähdyttämällä.

”Žemaitiškas kastinys” on tyypillisesti tasaista ja paksua; + 6 °C:een lämpötilassa sen rakenne on jäykän kermamainen, yksittäisiä nestepisaroita sisältävä, toisinaan mureneva ja erittäin hyvin suussa sulava. Sen väri on kauttaaltaan yhtenäisen kellertävä. Siinä voi esiintyä valmistuksessa käytettyjen yrttien ja mausteiden värivivahteita, ja se voi sisältää mausteita tai yrttejä pieninä muruina. Maku on mieto, hieman maitohappoinen, kevyen suolainen ja käytettyihin mausteisiin tai yrtteihin vavahtava.

”Žemaitiškas kastinys” -tuotteen fysikaalis-kemialliset ominaisuudet:

— rasvapitoisuus valmistusohjeesta riippuen 25–30 %

— ruokasuolapitoisuus 1–1,5 %.

3.6. *Sen maataloustuotteen tai elintarvikkeen tuotantomenetelmän kuvaus, johon 3.1 kohdan mukaista nimeä sovelletaan (asetuksen (EY) N:o 1216/2007 3 artiklan 2 kohta)*

Raaka-aineet:

— hapankerma, jonka rasvapitoisuus on 25–30 %: 80–83 kg/100 kg tuotetta

— voi, jonka rasvapitoisuus on vähintään 82 %: 6–7 kg/100 kg tuotetta

— piimä, jonka rasvapitoisuus on 2,5–4 %: 5–5,5 kg/100 kg tuotetta

— ruokasuola: 1–1,5 kg/100 kg tuotetta.

Yrttejä ja mausteita (mustapippuri, maustepippuri, kumina, tilli, minttu) tai niiden sekoitusta voidaan käyttää suhteessa 0,1–0,15 kg/100 kg tuotetta ja maustevihanneksia (valkosipuli tai sipuli) suhteessa 1–2 kg/100 kg tuotetta.

Tuotantomenetelmä:

”Žemaitiškas kastinys” valmistetaan perinteisen menetelmän mukaan.

Ainekset punnitaan valmistusohjeen mukaan. Hapankerma ja piimä sekoitetaan erillisessä astiassa ja lämmitetään 25–30 °C:seen. Kylmä voi pehmennetään lämmittämällä se 25–30 °C:seen. Maustevihannekset puhdistetaan ja pilkotaan.

Lämmitetty pehmennetty voi laitetaan ohjeen mukaisesti valmistusastiaan. Hapankerma-piimäseosta lisätään vähitellen 1/8 ohjeen mukaisesta määrästä kerrallaan ja sekoitetaan käsin tai koneellisesti. Sekoittaminen on aina tehtävä samaan suuntaan. Kun seoksen rakenne muistuttaa hapankermaa (kirnupiimä ei saa erottua), lisätään jälleen 1/8 hapankerma-piimäseosta ja jatketaan sekoittamista. Sama toistetaan kunnes koko hapankerma-piimäseos on lisätty (ohjeen mukaisesti). Kun ”Žemaitiškas kastinys” alkaa jähmettyä, siihen sekoitetaan tasaisesti suola, jauhetut yrtit ja mausteet ja pilkotut maustevihannekset. ”Žemaitiškas kastinys” on pakattava välittömästi ennen kuin se kovettuu.

”Žemaitiškas kastinys” pakataan pieniin saviruukkuihin tai kertakäyttöisiin astioihin, joiden vetoisuus on 250, 200 tai 100 g. Ruukut suljetaan savesta valmistetulla kannella, jonka päälle asetetaan narulla kiinnitettävä suojus. Kertakäyttöpakkaukset suljetaan alumiinifoliosta valmistetulla kannella. Pakkaamisen jälkeen ”Žemaitiškas kastinys” jäähdytetään 6 °C:seen. Kun tuote on jäähtynyt, se muuttuu tasaisen kiinteäksi.

3.7. *Maataloustuotteen tai elintarvikkeen erityisluonne (asetuksen (EY) N:o 1216/2007 3 artiklan 3 kohta)*

”Žemaitiškas kastinys” erottuu muista saman tavaraluokan tuotteista seuraavien erityisominaisuuksien perusteella:

— Perinteiset ainesosat ja valmistusmenetelmä: Muista kastinys-tuotteista poiketen ”Žemaitiškas kastinys” on aina valmistettu lähes samalla tavalla kuin 3.8 kohdassa mainituissa ensimmäisissä kirjallisissa lähteissä kerrotaan, toisin sanoen samoja ainesosia on käytetty kutakuinkin samoissa

suhteissa. Myöhemmin on alettu valmistaa myös muuntyyppisiä kastinys-tuotteita makuvalikoiman laajentamiseksi. Niissä hapankerma korvattiin kokonaan piimällä tai sitä sekoitettiin kefiiriin; tuotteeseen saatettiin myös lisätä punajuuri- tai porkkanamehua tai munakeltuaista, mikä antaa tuotteelle punaisen tai keltaisen värin. ”Žemaitiškas kastinys” valmistetaan sekoittamalla tasaisen hitaasti voita ja hapankerma-piimäseosta, jota lisätään 1/8 kerrallaan valvoen huolellisesti lämpötilaa (25–30 °C), jotta kirnupiimä ei pääse erottumaan. Muunlaisen kastinysin tuotantoa on nykyaikaistettu. Niitä ei enää sekoiteta vaivaamalla vaan ne vatkataan, ja kaikki ainesosat lisätään 3–4 erässä ja toisinaan jopa kaikki kerralla. Myös lämpötilanvaihtelut voivat olla suurempia.

— Maku: ”Žemaitiškas kastinys” on maultaan mieto, hieman maitohappoinen, kevyen suolainen ja käytettyihin mausteisiin tai yrtteihin vivahtava. Muuntyyppinen kastinys on maultaan pikemminkin kirpeän hapanta (jos hapankerma on korvattu piimällä) tai hiivaisen hapanta (jos hapankerma on korvattu kefiirillä), ja sen maussa tuntuu myös lisätyn punajuuri- tai porkkanamehun taikka munankeltuaisen aromi.

— Rakenne: ”Žemaitiškas kastinys” on rakenteeltaan paksua ja tasaista; + 6 °C:een lämpötilassa sen rakenne on jäykän kermamainen, yksittäisiä nestepisaroita sisältävä, toisinaan mureneva ja erittäin hyvin suussa sulava. Muuntyyppinen kastinys on rakenteeltaan pehmeää ja levittyvää.

3.8. *Maataloustuotteen tai elintarvikkeen perinteinen luonne (asetuksen (EY) N:o 1216/2007 3 artiklan 4 kohta)*

Kaikkialla Liettuassa yleisen alkukantaisen voinvalmistusmenetelmän, jossa hapankermaa vatkattiin vadissa lusikalla, ohella ainoastaan yhdellä Liettuan alueella – Žemaitijassa – kehittyi omanlainen erityinen menetelmä käsitellä hapankermaa lämmittämällä sitä varoen samalla kirnupiimän erottumista. Tämä menetelmä levisi sittemmin koko Liettuaan. Näin syntyi Žemaitiškas kastinys, tuote, jolla on erityinen maku ja koostumus (Lietuvių kalbos atlasas. T. 1. Leksika, Vilna, 1977). Sitä kuvaillaan 1800-luvun tieteellisissä julkaisuissa (Liudwik Adam Jucewicz (Liudwik z Pokiewia): Litwa pod wzgledem starozytnych zabytkow, obyczajow i zwyczajow skreslona., Wilno, 1846, Leon Potocki: Pamiętniki Pana Kamertona, Poznan, 1869), joissa korostetaan sen valmistusmenetelmää (lämmittämällä hapankermaa) ja maukkautta.

Liettuan kansallismuseossa (kansatieteellisen arkiston kokoelmat F 15-4; F 15-13; F 32-7; F 32–48) säilytetään 1800-luvun lopussa ja 1900-luvun alussa syntyneiden henkilöiden antamia kuvauksia valmistusmenetelmästä ja -ohjeesta: Lämmitetylle savivadille pannaan aluksi kolme ruokalusikallista hapankermaa ja puoli lusikallista voita. Sekoitetaan hyvin ja hämmennetään puulusikalla aina samaan suuntaan. Kun sekoitettu massa alkaa jäähtyä ja muistuttaa kirnupiimää, vatia lämmitetään kuumassa vedessä, minkä jälkeen nestemäiseksi muuttunut massa jäähdytetään kylmävesiastiassa. Massaan lisätään hapankermaa pienissä erissä koko ajan sekoittaen. Osa hapankermasta korvataan usein juoksetetulla maidolla, jolloin kastinysistä tulee kevyempi. Kun sekoittaminen lopetetaan, lisätään suola, yrtit ja muut mausteet (kumina, jauhettu pippuri, pilkottu sipuli ja valkosipuli tai kevätsipulin varsi, tilli ja minttu).

Vuonna 1983 julkaistussa tieteellisessä kokoomateoksessa Lietuvių valgiai (J. Pauliukonienė, Mokslas, Vilna, 1983), jossa kuvataan raaka-aineiden perinteisiä käsittelymenetelmiä, kerrotaan miten hapankerma erotetaan maidosta kuorimalla lusikalla. Siinä annetaan myös seuraava Žemaitiškas kastinysin valmistusohje: ”Žemaitiškas kastinys”: ½ l hapankermaa, 1 lusikallinen voita, ½ lusikallista kuminaa tai muita yrttejä tai mausteita, suolaa. Voi ja lusikallinen hapankermaa pannaan savikulhoon, joka asetetaan kuumaan veteen, ja seosta sekoitetaan puulusikalla. Lyhyen sekoittamisen jälkeen (ennen kirnupiimän erottumista) lisätään toinen lusikallinen hapankermaa, ja sekoittamista jatketaan kunnes kaikki hapankerma on lisätty. Kun massa alkaa muuttua paksummaksi, lisätään suola ja huuhdeltu ja kuivattu kumina ja sekoitetaan hyvin. Žemaitiškas kastinysin maku on mieto, hieman suolainen ja kevyesti hapan.

Žemaitiškas kastinysin valmistusmenetelmä ja -ohje ovat säilyneet muuttumattomina tähän päivään asti, mikä käy ilmi Liettuan ruokakulttuuriperintösäätiön (Kulinarinio paveldo fondas) sille vuonna 2010 myöntämästä todistuksesta, jossa vahvistetaan, että ”Žemaitiškas kastinys” valmistetaan edelleen perinteisten menetelmien mukaan käyttäen perinteisiä raaka-aineita, mausteita ja työvälineitä.

3.9. *Erityisluonnetta koskevat vähimmäisvaatimukset ja tarkastusmenettelyt (asetuksen (EY) N:o 1216/2007 4 artikla)*

Žemaitiškas kastinysin erityisominaisuuksien osalta tehdään seuraavat tarkastukset:

1. kunkin vastaanotetun raaka-aine-erän laatu:

— hapankerman ja piimän rasvapitoisuuden on vastattava 3.6 kohdassa esitettyjä vaatimuksia; tarkastus laboratoriossa;

— voin rasvapitoisuuden on vastattava 3.6 kohdassa esitettyjä vaatimuksia; tarkastus laboratoriossa;

— mausteiden ja maustevihannesten aistinvaraiset ominaisuudet (maku, aromi ja väri) tarkastetaan asiakirjojen ja aistinvaraisten kokeiden perusteella;

2. 3.6 kohdassa esitetty valmistusmenetelmä: prosessin eri vaiheiden perättäisyys ja teknisten parametrien (ainesosien lämpötila ja mittasuhteet) noudattaminen tarkastetaan silmämääräisesti ja tekemällä mittauksia kunkin erän valmistuksen yhteydessä;

3. lopputuotteen laatu kussakin erässä:

— aistinvaraisten ominaisuuksien (rakenne, väri, maku) on vastattava 3.5 kohdassa esitettyjä vaatimuksia; tarkastus astinvaraisin kokein;

— rasvapitoisuuden on vastattava 3.5 kohdassa esitettyjä vaatimuksia; tarkastus laboratoriossa;

— suolapitoisuuden on vastattava 3.5 kohdassa esitettyjä vaatimuksia; tarkastus valmistusohjeen perusteella ja tarvittaessa laboratoriossa.

Vähintään kerran vuodessa 4.1 kohdassa nimetyn viranomaisen on tarkastettava, että tuote ja sen valmistusmenetelmä vastaavat eritelmän vaatimuksia.

4. **Tuote-eritelmän noudattamisen tarkastamisesta vastaavat viranomaiset tai elimet**

4.1. *Nimi ja osoite*

Nimi: Valstybinė maisto ir veterinarijos tarnyba

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

Tfn +370 52404361
Sähköposti: vvt@vet.lt

☒ Julkinen ☐ Yksityinen

4.2. *Viranomaisen tai elimen erityistehtävät*

Edellä 4.1 kohdassa tarkoitetun valvontaelimen tehtävänä on huolehtia kaikkien eritelmässä vahvistettujen vaatimusten noudattamisen valvomisesta.

EUR-Lex (http://new.eur-lex.europa.eu) on suora ja maksuton portti Euroopan unionin lainsäädäntöön. Sivustolla voi tarkastella *Euroopan unionin virallista lehteä*, ja siellä ovat nähtävillä myös sopimukset, lainsäädäntö, oikeuskäytäntö ja lainsäädännön valmisteluasiakirjat.

Lisätietoja Euroopan unionista löytyy osoitteesta: http://europa.eu

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