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II

(Communications)

COMMUNICATIONS PROVENANT DES INSTITUTIONS, ORGANES ET ORGANISMES DE L'UNION EUROPÉENNE

COMMISSION EUROPÉENNE

Non-opposition à une concentration notifiée

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

(Texte présentant de l'intérêt pour l'EEE)

(2013/C 237/01)

Le 18 avril 2013, la Commission a décidé de ne pas s'opposer à la concentration notifiée susmentionnée et de la déclarer compatible avec le marché commun. Cette décision se fonde sur l'article 6, paragraphe 1, point b) du règlement (CE) n° 139/2004 du Conseil. Le texte intégral de la décision n'est disponible qu'en anglais et sera rendu public après suppression des secrets d'affaires qu'il pourrait contenir. Il pourra être consulté:

— dans la section consacrée aux concentrations, sur le site internet de la DG concurrence de la Commission (http://ec.europa.eu/competition/mergers/cases/). Ce site permet de rechercher des décisions concernant des opérations de concentration à partir du nom de l'entreprise, du numéro de l'affaire, de la date ou du secteur d'activité,

— sur le site internet EUR-Lex (http://eur-lex.europa.eu/fr/index.htm), qui offre un accès en ligne au droit communautaire, sous le numéro de document 32013M6843.

IV

(Informations)

INFORMATIONS PROVENANT DES INSTITUTIONS, ORGANES ET ORGANISMES DE L'UNION EUROPÉENNE

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Taux de change de l'euro [1]

14 août 2013

(2013/C 237/02)

1 euro =

	Monnaie	Taux de change		Monnaie	Taux de change
USD	dollar des États-Unis	1,3243	AUD	dollar australien	1,4524
JPY	yen japonais	130,17	CAD	dollar canadien	1,3689
DKK	couronne danoise	7,4583	HKD	dollar de Hong Kong	10,2705
GBP	livre sterling	0,85440	NZD	dollar néo-zélandais	1,6501
SEK	couronne suédoise	8,6393	SGD	dollar de Singapour	1,6835
CHF	franc suisse	1,2415	KRW	won sud-coréen	1 482,39
ISK	couronne islandaise		ZAR	rand sud-africain	13,2129
NOK	couronne norvégienne	7,8130	CNY	yuan ren-min-bi chinois	8,1041
BGN	lev bulgare	1,9558	HRK	kuna croate	7,5415
CZK	couronne tchèque	25,822	IDR	rupiah indonésien	13 667,59
HUF	forint hongrois	298,62	MYR	ringgit malais	4,3351
LTL	litas lituanien	3,4528	PHP	peso philippin	57,975
LVL	lats letton	0,7025	RUB	rouble russe	43,8995
PLN	zloty polonais	4,2037	THB	baht thaïlandais	41,504
RON	leu roumain	4,4315	BRL	real brésilien	3,0586
TRY	lire turque	2,5664	MXN	peso mexicain	16,8756
			INR	roupie indienne	81,3700

[1] *Source*: taux de change de référence publié par la Banque centrale européenne.

INFORMATIONS RELATIVES À L'ESPACE ÉCONOMIQUE EUROPÉEN

AUTORITÉ DE SURVEILLANCE AELE

Aide d'État — Décision de clore une affaire concernant une aide existante à la suite de l'acceptation de mesures utiles par un État de l'AELE

(2013/C 237/03)

L'Autorité de surveillance AELE a proposé des mesures utiles, qui ont été acceptées par l'Islande, en ce qui concerne la mesure suivante:

Date d'adoption de la décision:	24 avril 2013
Affaire n°:	70958
Numéro de la décision:	159/13/COL
État de l'AELE concerné:	Islande
Titre:	aides d'État accordées à Landsvirkjun et à Orkuveita Reykjavíkur
Base juridique:	loi 42/1983 sur Landsvirkjun, loi 45/1998 sur les collectivités locales, loi 139/2001 sur la constitution d'Orkuveita Reykjavíkur en tant qu'entreprise commune et loi 121/1997 sur les garanties d'État
Objectif:	s.o.
Forme de l'aide:	garanties illimitées de l'État et des communes propriétaires, sans paiement de primes commerciales appropriées, accordées en faveur de Landsvirkjun et d'Orkuveita Reykjavíkur
Secteurs économiques:	secteur de l'électricité
Autres informations:	au vu des mesures et des autres engagements pris par les autorités islandaises pour supprimer les garanties d'État illimitées en faveur de Landsvirkjun et d'Orkuveita Reykjavíkur, les préoccupations de l'Autorité concernant l'incompatibilité du régime avec l'accord EEE ont été dissipées et la procédure d'examen est close.

Le texte de la décision dans la ou les langues faisant foi, expurgé des données confidentielles, est disponible sur le site web de l'Autorité de surveillance AELE, à l'adresse suivante:

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

Invitation à présenter des observations, en application de l'article 1er, paragraphe 2, de la partie I du protocole 3 de l'accord entre les États de l'AELE relatif à l'institution d'une Autorité de surveillance et d'une Cour de justice, concernant des questions d'aides d'État relatives aux aides à finalité régionale pour le régime d'encouragement à l'investissement en Islande et six accords d'investissement

(2013/C 237/04)

Par décision nº 177/13/COL du 30 avril 2013 reproduite dans la langue faisant foi dans les pages qui suivent le présent résumé, l'Autorité de surveillance AELE a ouvert la procédure prévue à l'article 1er, paragraphe 2, de la partie I du protocole 3 de l'accord entre les États de l'AELE relatif à l'institution d'une Autorité de surveillance et d'une Cour de justice. Les autorités islandaises ont reçu copie de la décision.

Par la présente, l'Autorité de surveillance AELE invite les États de l'AELE, les États membres de l'UE et les parties intéressées à soumettre leurs observations sur la mesure en cause dans un délai d'un mois à compter de la publication de la présente communication, à l'adresse suivante:

Autorité de surveillance AELE
Greffe
Rue Belliard 35
1040 Bruxelles
BELGIQUE

Ces observations seront communiquées aux autorités islandaises. L'identité des parties intéressées qui présentent des observations peut faire l'objet d'un traitement confidentiel sur demande écrite et motivée.

RÉSUMÉ

Procédure

Le 13 octobre 2010, l'autorité a approuvé un régime d'aides à l'investissement (ci-après dénommé le «régime d'aides»), notifié par les autorités islandaises en application de l'article 1er, paragraphe 3, de la partie I du protocole 3, par la décision nº 390/10/COL.

Ce régime prévoit la possibilité d'accorder des aides sous la forme de subventions directes, par l'intermédiaire de différentes exonérations fiscales pour une durée maximale de dix ans et par la vente et la location de terrains à des prix inférieurs à ceux du marché à des entreprises de tous les secteurs, à l'exception du secteur financier, lors d'un investissement initial dans des zones pouvant bénéficier d'aides à finalité régionale (dénommées «zones c») en Islande. Le régime arrive à échéance le 31 décembre 2013.

La base juridique du régime d'aides approuvé par l'Autorité est constituée des textes suivants:

— la loi nº 99/2010 sur les mesures d'aides aux investissements de démarrage en Islande (ci-après la «loi»), adoptée par le Parlement islandais le 29 juin 2010; et

— le règlement (UE) nº 985/2010 sur les mesures d'incitation en faveur des investissements de démarrage en Islande, arrêté par le ministère de l'industrie le 25 novembre 2010 (ci-après le «règlement»), qui correspond à un projet de règlement présenté à l'Autorité le 27 septembre 2010. Le règlement est un acte de droit dérivé, fondé sur la loi.

Le 30 décembre 2010, le ministère de l'industrie a arrêté un nouveau règlement, à savoir le règlement (UE) nº 1150/2010 (ci-après le «règlement complémentaire»), modifiant le règlement, notamment pour garantir l'effet incitatif des aides à l'investissement. Le règlement supplémentaire n'a pas été notifié à l'Autorité.

Entre 2010 et 2013, l'État islandais a conclu une série d'accords relevant selon lui du régime d'aides (ci-après les «six accords d'investissement»), à savoir:

1) le 30 décembre 2010 avec Becromal Islande ehf;

2) le 30 décembre 2010 avec Thorsil ehf;

3) le 17 février 2011 avec Íslenska Kísilfélagið ehf;

4) le 22 septembre 2011 avec Verne Real Estate II ehf;

5) le 7 mai 2012 avec GMR Endurvinnslan ehf;

6) le 28 janvier 2013 avec Marmeti ehf.

À la suite de discussions préalables à la notification, les autorités islandaises ont notifié à l'Autorité, le 13 décembre 2012, une série de propositions d'amendements (ci-après les «amendements notifiés») à l'acte, conformément à l'article 1er, paragraphe 3, de la partie I du protocole 3.

Appréciation de la mesure

Les amendements notifiés portent sur la suppression des subventions directes, l'adoption d'une nouvelle méthode instaurant un impôt maximal sur les sociétés pour tous les nouveaux projets relevant du régime d'aides, l'exonération des droits de timbre et le relèvement du seuil d'exonération de la taxe communale sur les biens immobiliers et des cotisations de sécurité sociale. L'Autorité est parvenue à la conclusion provisoire que les amendements notifiés n'étaient pas dissociables du régime d'aides en tant que tel. En conséquence, elle a évalué le régime d'aides dans son ensemble, tel que modifié. Elle a, en outre, évalué l'application du régime et émis des doutes quant à la compatibilité avec l'accord EEE de certains éléments des six accords d'investissement conclus par l'Islande sur la base du régime d'aides modifié.

En particulier, l'Autorité a émis des doutes quant à la question de savoir si les aides octroyées dans le cadre des accords d'investissement conclus avec Becromal, Kísilfélagið et Verne entrent dans le champ d'application du régime d'aides tel qu'autorisé par l'Autorité et ont respecté le critère de l'effet d'incitation des aides à l'investissement.

L'Autorité a également émis des doutes quant au fait de savoir si l'accord d'investissement conclu avec Marmeti entre dans le champ d'application du régime d'aides, en ce qui concerne le critère de l'effet d'incitation.

L'Autorité a par ailleurs émis des doutes quant au fait de savoir si des éléments de l'accord d'investissement conclu avec Thorsil et GMR prévoyaient l'octroi d'une aide en dehors du régime approuvé.

L'Autorité a donc émis des doutes sur la compatibilité avec l'accord EEE du régime d'aides modifié et des aides accordées dans le cadre des six accords d'investissement.

Conclusion

Eu égard aux considérations qui précèdent, l'Autorité doute que le régime modifié et les six accords d'investissement susmentionnés soient conformes à l'article 61, paragraphe 3, de l'accord EEE, à la lumière des exigences arrêtées dans l'encadrement en matière d'aides d'État à finalité régionale.

Compte tenu de ce qui précède, l'Autorité a décidé d'ouvrir la procédure formelle d'examen prévue à l'article 1er, paragraphe 2, de la partie I du protocole 3 de l'accord entre les États de l'AELE relatif à l'institution d'une Autorité de surveillance et d'une Cour de justice en ce qui concerne le régime d'aides à l'investissement et les amendements notifiés par les autorités islandaises, tel que modifié par le règlement (UE) nº 1150/2010 mis en œuvre par les autorités islandaises, et les six accords d'investissement.

Les parties intéressées sont invitées à présenter leurs observations dans un délai d'un mois à compter de la publication de la présente décision au *Journal officiel de l'Union européenne*.

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

(Avis)

PROCÉDURES RELATIVES À LA MISE EN ŒUVRE DE LA POLITIQUE DE CONCURRENCE

COMMISSION EUROPÉENNE

Communication de la Commission publiée conformément à l'article 27, paragraphe 4, du règlement (CE) nº 1/2003 du Conseil dans les affaires AT.39678 Deutsche Bahn I, AT.39731 Deutsche Bahn II et AT.39915 Deutsche Bahn III

(2013/C 237/05)

1. INTRODUCTION

1. L'article 9 du règlement (CE) nº 1/2003 du Conseil du 16 décembre 2002 relatif à la mise en œuvre des règles de concurrence prévues aux articles 101 et 102 du traité ([1]) dispose que, lorsqu'elle envisage d'adopter une décision exigeant la cessation d'une infraction et que les entreprises concernées offrent des engagements de nature à répondre aux préoccupations dont elle les a informées dans son évaluation préliminaire, la Commission peut, par voie de décision, rendre ces engagements obligatoires pour les entreprises. La décision peut être adoptée pour une durée déterminée et conclut qu'il n'y a plus lieu que la Commission agisse. Avant l'adoption d'une décision en application de l'article 9 du règlement (CE) nº 1/2003, conformément à l'article 27, paragraphe 4, de ce même règlement, la Commission publie un résumé succinct de l'affaire et le principal contenu des engagements. Les parties intéressées sont alors invitées à présenter leurs observations dans le délai fixé par la Commission.

2. RÉSUMÉ DE L'AFFAIRE

2. Le 6 juin 2013, la Commission a adopté une évaluation préliminaire au sens de l'article 9, paragraphe 1, du règlement (CE) nº 1/2003 adressée à Deutsche Bahn AG et ses filiales DB Energie GmbH (DB Energie), DB Mobility Logistics AG, DB Fernverkehr AG et DB Schenker Rail Deutschland AG ([2]).

3. Dans son évaluation préliminaire, la Commission a exprimé des inquiétudes quant au fait que le groupe DB aurait abusé de sa position dominante sur le marché de la fourniture de courant de traction en Allemagne en imposant à ses concurrents, pour ce courant de traction, des prix qui ont comprimé les marges sur les marchés du transport ferroviaire de passagers sur longue distance et du fret ferroviaire, en violation de l'article 102 du TFUE.

4. La Commission considère à titre préliminaire que DB Energie occupe une position dominante sur le marché de la fourniture de courant de traction aux entreprises ferroviaires actives en Allemagne. Le courant de traction est un intrant indispensable aux entreprises ferroviaires pour être concurrentielles sur les marchés allemands du transport ferroviaire. Depuis 2003, DB Energie vend du courant de traction à des entreprises ferroviaires dans le cadre d'une offre globale incluant le prix de l'électricité consommée (prix de l'électricité) et le prix pour l'utilisation du réseau de courant de traction (redevance d'accès au réseau).

5. Dans son évaluation préliminaire, la Commission a estimé que ce système de tarification, et notamment ses rabais qui profitaient plus aux opérateurs ferroviaires du groupe DB qu'à leurs concurrents, a pu gêner le développement d'une concurrence sur les marchés du fret ferroviaire et du transport de passagers sur longue distance. Sur ces marchés, la Commission craint que le système de tarification du courant de traction utilisé par DB Energie engendre, entre le prix du courant de traction facturé aux

([1]) JO L 1 du 4.1.2003, p. 1. À compter du 1er décembre 2009, les articles 81 et 82 du traité CE sont devenus respectivement les articles 101 et 102 du traité sur le fonctionnement de l'Union européenne («TFUE»). Dans les deux cas, les dispositions sont, en substance, identiques. Aux fins de la présente communication, les références faites aux articles 101 et 102 du TFUE s'entendent, s'il y a lieu, comme faites respectivement aux articles 81 et 82 du traité CE.

([2]) On entend ci-après par «groupe DB» Deutsche Bahn AG et l'ensemble de ses filiales.

concurrents et le prix des services de transport ferroviaire facturé aux consommateurs par les sociétés de transport appartenant au groupe DB, un écart empêchant leurs concurrents tout aussi efficaces d'exercer leurs activités de manière rentable ou réduisant artificiellement leur marge bénéficiaire. L'enquête de la Commission a conclu, à titre préliminaire, que cette situation soulève des problèmes de concurrence sur les marchés du transport ferroviaire de passagers sur longue distance et du fret ferroviaire.

6. En novembre 2010, la Cour fédérale de justice allemande a jugé que le réseau de courant de traction devait être considéré comme un réseau d'énergie et que ses conditions et redevances d'accès étaient réglementées conformément à la loi allemande sur le secteur énergétique (*Energiewirtschaftsgesetz* — EnWG) ([1]). En conséquence, DB Energie devrait facturer séparément la redevance d'accès au réseau, de sorte que les fournisseurs tiers d'électricité (c'est-à-dire ceux qui n'appartiennent pas au groupe DB) puissent également faire concurrence à DB Energie sur le marché de la fourniture d'électricité aux entreprises ferroviaires ([2]).

3. ESSENTIEL DU CONTENU DES ENGAGEMENTS PROPOSÉS

7. Le groupe DB ne partage pas l'évaluation préliminaire de la Commission selon laquelle il aurait abusé de sa position dominante sur le marché de la fourniture de courant de traction aux entreprises ferroviaires allemandes. Il a néanmoins proposé des engagements, en vertu de l'article 9 du règlement (CE) n° 1/2003, afin de répondre aux préoccupations de la Commission en matière de concurrence. Les principaux éléments de ces engagements sont décrits ci-dessous.

8. Au plus tard trois mois après la notification de la décision de la Commission rendant ces engagements obligatoires pour le groupe DB et au plus tôt le 1er janvier 2014, DB Energie introduira un nouveau système de tarification du courant de traction faisant la distinction entre les prix de l'électricité et les redevances pour l'accès au réseau, tel qu'approuvé par l'autorité de régulation allemande compétente (*Bundesnetzagentur*). Ce nouveau système de tarification est conçu pour permettre à des fournisseurs tiers d'électricité d'entrer sur le marché de la fourniture d'électricité aux entreprises ferroviaires ([3]).

9. Dans ce nouveau système, DB Energie facturera l'électricité au même prix pour toutes les entreprises ferroviaires sans appliquer de rabais basés sur le volume ou la durée.

10. DB Energie versera aux entreprises ferroviaires situées en Allemagne et n'appartenant pas au groupe DB un remboursement rétroactif unique équivalant à 4 % de leur facture de courant de traction pour la période d'un an précédant l'entrée en vigueur du nouveau système de tarification.

11. DB Energie et DB Mobility Logistics AG fourniront chaque année à la Commission des données lui permettant d'évaluer si les niveaux de prix du courant de traction et des services de transport facturés par le groupe DB pourraient entraîner une compression des marges. DB Energie notifiera également au préalable à la Commission toute modification de ses prix de l'électricité.

12. Les engagements entreront en vigueur au plus tard trois mois après la notification de la décision de la Commission. Ils seront valables cinq ans ([4]) après la notification de la décision de la Commission ou jusqu'à ce que 20 % des volumes de courant de traction achetés par les concurrents du groupe DB proviennent de fournisseurs tiers d'électricité. Le groupe DB désignera également un mandataire qui veillera au respect des engagements.

13. Ces engagements sont publiés sur le site internet de la direction générale de la concurrence, à l'adresse suivante: http://ec.europa.eu/competition/index_en.html

([1]) Bundesgerichtshof, arrêt du 9 novembre 2010 dans l'affaire EnVR 1/10.

([2]) De plus amples informations sur cette modification du système de tarification et sur les conditions du nouveau système sont disponibles sur le site web de DB Energie (en allemand uniquement): http://www.dbenergie.de/dbenergie-de/netzbetreiber/netzbetreiber_bahnstromnetz/2500898/bahnstromnetz_konsultation.html

([3]) En outre, l'introduction du nouveau système sera complétée par l'obligation de présenter des comptabilités et des informations distinctes sur les activités de DB Energie en tant que gestionnaire du réseau de courant de traction et en tant que fournisseur d'électricité.

([4]) L'engagement par DB Energie de ne pas accorder, pour son offre de fourniture d'électricité, de rabais basés sur la durée n'aura qu'une validité de trois ans.

4. INVITATION À PRÉSENTER DES OBSERVATIONS

14. Sous réserve des résultats de la consultation des acteurs du marché, la Commission envisage d'adopter une décision en application de l'article 9, paragraphe 1, du règlement (CE) n° 1/2003 rendant obligatoires les engagements synthétisés ci-dessus et publiés sur le site internet de la direction générale de la concurrence.

15. Conformément à l'article 27, paragraphe 4, du règlement (CE) n° 1/2003, la Commission invite les tiers intéressés à présenter leurs observations sur les engagements proposés. Celles-ci doivent lui parvenir dans un délai d'un mois à compter de la date de la présente publication. Les tiers intéressés sont également invités à fournir une version non confidentielle de leurs observations, dans laquelle toutes les informations qu'ils estiment être des secrets d'affaires ou d'autres informations confidentielles devront être supprimées et remplacées, le cas échéant, par un résumé non confidentiel ou par les mentions «secrets d'affaires» ou «confidentiel». Conformément à l'article 16 du règlement (CE) n° 773/2004, une telle demande de confidentialité devrait être dûment motivée, en précisant notamment les motifs pour lesquels la divulgation des informations en question pourrait causer un préjudice sérieux.

16. Les réponses et les observations formulées devront, de préférence, être motivées et exposer les faits pertinents. Si vous constatez un problème en ce qui concerne l'une ou l'autre partie des engagements offerts, la Commission vous invite à proposer une solution éventuelle.

17. Les observations peuvent être adressées à la Commission, sous le numéro de référence AT.39678/AT.39731/AT.39915 Deutsche Bahn I/II/III, par courrier électronique (COMP-GREFFE-ANTITRUST@ec.europa.eu), par télécopie (+32 22950128) ou par voie postale à l'adresse suivante:

Commission européenne
Direction générale de la concurrence
Greffe des ententes
1049 Bruxelles
BELGIQUE

AUTRES ACTES

COMMISSION EUROPÉENNE

Publication d'une demande en application de l'article 50, paragraphe 2, point a), du règlement (UE) n° 1151/2012 du Parlement européen et du Conseil relatif aux systèmes de qualité applicables aux produits agricoles et aux denrées alimentaires

(2013/C 237/06)

La présente publication confère un droit d'opposition conformément à l'article 51 du règlement (UE) n° 1151/2012 du Parlement européen et du Conseil [1].

DOCUMENT UNIQUE

RÈGLEMENT (CE) N° 510/2006 DU CONSEIL

relatif à la protection des indications géographiques et des appellations d'origine des produits agricoles et des denrées alimentaires [2]

«SZENTESI PAPRIKA»

N° CE: HU-PGI-0005-0912-30.11.2011

IGP (X) AOP ( )

1. **Dénomination**

«Szentesi paprika»

2. **État membre ou pays tiers**

Hongrie

3. **Description du produit agricole ou de la denrée alimentaire**

3.1. *Type de produit*

Classe 1.6 — Fruits, légumes et céréales en l'état ou transformés

3.2. *Description du produit portant la dénomination visée au point 1*

L'indication géographique protégée «Szentesi paprika» désigne les fruits cultivés par forçage des types variétaux et des variétés énumérés de *Capsicum annuum*.

Lors de leur mise sur le marché, les produits couverts par l'IGP «Szentesi paprika» doivent dans l'ensemble être intacts, sains, et les différents types variétaux doivent quant à eux posséder les caractéristiques suivantes:

a) Poivron blanc à farcir (TV) (*Capsicum annuum* L. *var. grossum*)

[1] JO L 343 du 14.12.2012, p. 1.
[2] Remplacé par le règlement (UE) n° 1151/2012.

À maturité, le «Szentesi paprika» blanc est doux au toucher, sa peau est lisse, glissante; il est épointé et recourbé à son extrémité et sa chair est croquante et épaisse. Sa surface est lisse, il est de couleur crème brillante (ivoire). Il est de forme conique, mesure de 60 à 120 mm de longueur et 40 à 70 mm de largeur; il se compose généralement de trois ou quatre lobes; l'épaisseur de sa chair varie de 4 à 7 mm, sa texture est ferme, sa peau est fine; son parfum de poivron est intense, aromatique et doux.

Variétés cultivées: 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, Skytia.

b) Piment fort pointu (*Capsicum annuum* L. *var. longum*)

La surface du «Szentesi paprika» fort pointu est brillante, lisse ou légèrement ondulée; il est long et pointu. Il présente une couleur vert clair, moyen ou foncé, et mesure de 150 à 250 mm de long et 20 à 50 mm de large; il se compose généralement de deux ou trois lobes, l'épaisseur de sa chair est de 3 à 4 mm, sa texture est ferme, sa peau est fine. Le produit dégage un parfum de poivron intense, il est piquant et présente un arôme et un goût agréables.

Variétés cultivées: Daras, Rush, Sarah, Fighter, Kard, Thunder, Kais.

Les variétés cultivées présentent une valeur de piquant comprise entre 2 500 et 5 000 sur l'échelle de Scoville.

c) Poivron de Kápia (*Capsicum annuum* L. *var. grossum*)

Le «Szentesi paprika» du groupe Kápia est de forme conique, légèrement aplatie; sa surface est lisse, brillante, de couleur veloutée rouge foncé à maturité. Il mesure 60 à 120 mm de longueur et 40 à 70 mm de largeur; il se compose typiquement de deux ou trois lobes. L'épaisseur de sa chair varie de 4 à 7 mm, sa texture est ferme, sa peau est d'épaisseur moyenne. Le fruit a une saveur sucrée intense, un parfum de paprika moulu et il est doux.

Variétés cultivées: Kárpia (T 112), Kapirex, Karpex, Mágus.

d) Poivron-tomate (*Capsicum annuum* L. *var. grossum*)

Le poivron-tomate «Szentesi paprika» a une forme bien caractéristique: c'est une sphère aplatie à la surface lisse, brillante, de couleur rouge sombre à maturité. D'un diamètre variant de 60 à 120 mm et d'une longueur de 40 à 60 mm, il se compose typiquement de trois ou quatre lobes, l'épaisseur de sa chair est de 5 à 7 mm, sa texture est ferme, sa peau est fine, il dégage un parfum de poivron intense et il est doux.

Variétés cultivées: Pritavit, Kabala, Bihar.

Au sein des différents types variétaux, la gamme des variétés indiquées ci-dessus pouvant être mises en culture peut varier chaque année.

3.3. *Matières premières (uniquement pour les produits transformés)*

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3.4. *Aliments pour animaux (uniquement pour les produits d'origine animale)*

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3.5. *Étapes spécifiques de la production qui doivent avoir lieu dans l'aire géographique délimitée*

Toutes les étapes du processus de production du «Szentesi paprika» doivent avoir lieu dans l'aire géographique délimitée au point 4:

— la production et la culture des plants de poivron,

— en particulier la culture intégrée et biologique de certains types variétaux et de certaines variétés,

— le choix de la période de production,

— la mise en place d'une zone de culture,

— la préparation et la fertilisation du sol,

— la plantation,

— la préparation des structures de soutien,

— les travaux d'entretien des plantes (phytotechnique),

— l'arrosage et l'apport en substances nutritives,

— la régulation des conditions climatiques,

— l'application de méthodes de traitement antiparasitaire intégrées et écologiques,

— la cueillette, la préparation du produit, le préstockage/stockage,

— l'élimination des restes de culture, le nettoyage et la désinfection des installations de production.

3.6. *Règles spécifiques applicables au tranchage, râpage, conditionnement, etc.*

Le calibrage, le conditionnement et l'étiquetage du «Szentesi paprika» ont lieu chez le producteur ou dans toute autre installation appropriée, dans l'aire géographique délimitée.

Conditionnés par lots: plateaux, paniers, sacs en polyéthylène (3, 5, 20, 30, 40, 50, 60, 80 poivrons/unité); conditionnés au poids: paniers, mailles Raschel (0,35, 0,5, 0,7, 1, 2 kg de poivrons/unité) ou cartons: dans des emballages M10, M20, M30 (2,5, 10, 12, 14 kg de poivrons/unité). Le type d'emballage de certains types variétaux peut changer à tout moment en fonction des nécessités commerciales.

Afin de préserver la qualité et l'homogénéité caractéristiques de chaque type variétal, et plus spécifiquement de chaque variété, ainsi que le goût, le parfum, les arômes, la texture et l'intégrité qui font la spécificité de l'IGP «Szentesi paprika», mais aussi afin d'assurer la traçabilité des produits, le conditionnement doit avoir lieu dans l'aire géographique délimitée.

3.7. *Règles spécifiques d'étiquetage*

— La combinaison de mots «Szentesi paprika» doit figurer sur les emballages.

— Une étiquette à codes-barres permettant la traçabilité du «Szentesi paprika» doit être apposée.

4. Description succincte de la délimitation de l'aire géographique

L'aire de production du «Szentesi paprika» couverte par l'indication géographique protégée (IGP) se situe dans le département de Csongrád et constitue une zone homogène.

La culture du «Szentesi paprika» a lieu dans les limites administratives des localités du département de Csongrád énumérées ci-après: Derekegyháza, Fábiánsebestyén, Felgyő, Mindszent, Nagymágocs, Nagytőke, Szegvár et Szentes.

5. Lien avec l'aire géographique

5.1. *Spécificité de l'aire géographique*

Les facteurs affectant la qualité de la culture du poivron, en particulier les conditions de température et de luminosité, ainsi que les conditions pédologiques et hydrographiques ont créé un environnement particulièrement favorable au développement de la culture irriguée du poivron propre à la région de Szentes, qui a commencé grâce au travail de pionnier des «maraîchers bulgares» (maraîchers ayant recours à des méthodes particulières à petite échelle, à la culture forcée en serres chaudes et à l'irrigation) qui se sont installés dans la région pendant la seconde moitié du XIX^{e} siècle.

C'est dans le Sud-Est de la Hongrie, dans l'un des bassins les plus profonds de la Grande Plaine, que se trouve la zone de culture traditionnelle de la région de Szentes. Du point de vue topographique, la zone occupe une place très particulière, car s'y étendent les terres les plus basses du pays; le relief présente trois versants, qui descendent depuis les départements voisins jusqu'à la vallée de la Tisza. Le cours d'eau le plus important du système hydrographique de la région est la Tisza, qui en délimite aussi par la même occasion la physionomie géographique tout entière. En raison de la multitude d'eaux

de surface typiques de la région, les types de sols dominants sont les sols calcaires et les sols solonetziques des plaines de tchernoziom. Les sols de la zone de production présentent de bonnes caractéristiques physiques, une texture granuleuse, un réchauffement rapide, une légère alcalinité, une richesse en eau et en substances nutritives, ainsi qu'une teneur élevée en humus et une épaisse couche arable.

Lors de la production du «Szentesi paprika», parmi les facteurs climatiques conférant aux fruits leurs qualités intrinsèques, la lumière et le nombre d'heure d'ensoleillement, d'une part, et les températures et la quantité de chaleur irradiée, d'autre part, jouent un rôle déterminant. La zone de culture traditionnelle de la région de Szentes est principalement dominée par des caractéristiques climatiques continentales. La durée d'ensoleillement est répartie uniformément dans la région. L'ensoleillement annuel est de 2 050 heures en moyenne. Si l'on tient compte des tendances de la température moyenne annuelle dans la zone de production, celle-ci fait partie des zones les plus chaudes du pays. La température moyenne annuelle est + 10-11 °C, la chaleur totale de la période de croissance s'élève quant à elle à 3 200-3 300 °C, ce qui est très favorable à la culture du poivron qui a besoin de chaleur.

En ce qui concerne les précipitations annuelles, cette région est toutefois la plus pauvre du pays avec des précipitations de 500 à 550 mm en moyenne annuelle. La répartition précise des précipitations dans l'année est la suivante: 40 % se produisent pendant l'hiver et 60 % pendant l'été. C'est la culture irriguée développée grâce aux conditions hydrographiques favorables — et mise en œuvre par les maraîchers bulgares — qui a ainsi permis la production de poivron consommatrice d'eau.

5.2. *Spécificité du produit*

Les principales valeurs et caractéristiques organoleptiques du «Szentesi paprika» originaire de l'aire géographique sont les suivantes: il a un goût prononcé, épicé, doux ou piquant; il est doté d'un parfum de poivron intense, ou qui évoque le paprika moulu; sa peau est fine. La chair des fruits varie de 3 à 7 mm d'épaisseur, ce qui permet de profiter pleinement des saveurs et des arômes même quand on le consomme comme produit frais, ce qui est généralement le cas.

Le «Szentesi paprika» blanc: à maturité, il est doux au toucher, sa peau est lisse, glissante; il est épointé et recourbé à son extrémité et sa chair est croquante et épaisse. Le parfum et les arômes du poivron frais sont particulièrement caractéristiques, ce qui est ainsi formulé dans l'expression populaire des consommateurs: «Le poivron de Szentes a du goût».

La surface du «Szentesi paprika» fort pointu est brillante, lisse ou légèrement ondulée; il est pointu et long; la texture de sa chair est ferme. Le produit dégage un parfum de poivron intense, il est piquant, il présente un arôme et un goût agréables.Le «Szentesi paprika» appartenant au groupe Kápia est de forme conique, légèrement aplatie; la texture de sa chair est ferme; sa peau est d'épaisseur moyenne. Sa surface est lisse, brillante et développe sous l'influence de l'environnement géographique (lumière, chaleur) une couleur veloutée rouge foncé particulièrement attrayante.

Le poivron-tomate «Szentesi paprika» a une forme bien caractéristique: c'est une sphère aplatie; en dépit de l'épaisseur de sa chair, sa peau est très mince et sa surface lisse; il prend une couleur rouge sombre à maturité.

5.3. *Lien causal entre l'aire géographique et la qualité ou les caractéristiques du produit (pour les AOP), ou une qualité spécifique, la réputation ou une autre caractéristique du produit (pour les IGP)*

Le lien avec l'aire géographique repose sur la bonne réputation dont jouit depuis longtemps le produit et sur le savoir-faire local des agriculteurs producteurs de «Szentesi paprika» qui se transmet de père en fils.

La réputation du «Szentesi paprika»

La culture irriguée du poivron propre à la région de Szentes s'est développée grâce au travail de pionnier des «maraîchers bulgares» qui se sont installés dans la région pendant la seconde moitié du XIX^{e} siècle. De ce fait, la production du célèbre «Szentesi paprika» n'a jamais cessé depuis lors. La réputation du produit est toujours importante aujourd'hui, comme en témoigne le premier prix obtenu en 2006 à Debrecen, lors du salon de l'agriculture maraîchère organisée en marge de la foire agricole Farmer Expo, où 300 entreprises nationales et étrangères étaient représentées. En 2007, le poivron destiné à être consommé frais a remporté le Magyar Termék Nagydíj (grand prix du produit hongrois).

Un grand nombre de données historiques attestent du lien séculaire entre la réputation du «Szentesi paprika» et l'aire géographique. On peut faire remonter l'apparition en Hongrie du poivron doux à l'établissement des maraîchers bulgares près de Úsztató major dans la région de Szegvár pendant l'hiver 1875-1876. Selon le grand recensement agricole de 1895, 92,74 % de la production totale de poivrons hongrois étaient concentrés dans la partie Sud-Est du pays, dans la région de Szentes. Les maraîchers louaient les plaines de tchernoziom et les terrains alluviaux de la région de l'actuel département de Csongrad, riches en humus et au réchauffement rapide, et choisissaient si possible un terrain en légère

pente. Ils utilisaient des graines pré-germées et des serres chaudes pour la culture précoce. Ils pratiquaient également l'interculture dans les pépinières, en cultivant par exemple à côté du poivron de jeunes plants de concombres, qui restaient en place après le repiquage du poivron. Ils repiquaient avec une petite motte les plants dépiqués. Ils procédaient à un arrosage important et régulier: ils utilisaient pour l'irrigation l'eau stagnante ayant chauffé ou l'eau provenant de cours d'eau peu profonds et à faible débit. Ils possédaient une méthode unique de collecte de l'eau et de drainage. À cette époque, dans la région de Szentes, on utilisait la roue dite à godets qui était adaptée au niveau d'eau fluctuant.

Savoir-faire local

Dans la zone de culture traditionnelle de la région de Szentes, la surface du sol conserve très bien la chaleur. Étant donné que le sol dans lequel le «Szentesi paprika» est cultivé absorbe davantage de chaleur qu'il ne s'en échappe, par rayonnement, aux premières heures du matin, la chaleur emmagasinée dans le sol et l'air de surface se diffuse, ce qui entraîne une élévation de la température. Le microclimat équilibré obtenu grâce à l'apport de chaleur harmonieux, associé à la culture irriguée mise en place par les maraîchers bulgares, permet de faire du «Szentesi paprika», qui est gourmand en chaleur et en eau, un produit d'une grande saveur.

Aux facteurs naturels s'ajoutent la contribution humaine des opérateurs régionaux et l'expérience pratique acquise dans la culture forcée (contrôle de la température, ventilation, protection contre le soleil, entretien des plantes) transmise au sein des familles. Le savoir-faire ainsi accumulé peut compenser les effets néfastes des conditions météorologiques extrêmes apparues ces dernières décennies, en garantissant et si possible en préservant la saveur, la couleur, l'arôme du «Szentesi paprika» ainsi que la forme intéressante spécifique de certains types variétaux.

En effet, la technologie introduite par les maraîchers bulgares pendant près de 150 ans de culture a évolué pour se conformer aux exigences de l'époque. Les facteurs essentiels à la culture du poivron ont été réévalués pendant la production, et de nouvelles méthodes de production sont apparues. Depuis les débuts jusqu'aux années 1960, on pouvait compter parmi les facteurs les plus importants dans la production les bonnes conditions du sol, le potentiel d'irrigation (Tisza, Körös et les systèmes de canaux d'irrigation), le nombre d'heures d'ensoleillement (possibilité de culture précoce) et le réchauffement du début du printemps. La période suivante s'est étendue de la fin des années 1960 à la fin des années 1980. Les producteurs de poivrons ont commencé à mettre à profit le réchauffement précoce pour la culture en serres, en tirant parti de manière optimale du nombre élevé d'heures d'ensoleillement pendant les mois d'hiver et de printemps. Dans les années 1960-1980, sous l'effet de l'énergie géothermique découverte dans la région, le «Szentesi paprika» est passé de la culture en plein air à la culture sous serres, où la culture hors-sol est répandue.

Référence à la publication du cahier des charges

[article 5, paragraphe 7, du règlement (CE) n° 510/2006 ([3])]

Bulletin du développement rural (*Vidékfejlesztési Értesítő*), 16 novembre 2011, année LXI, numéro 6, page 317.

http://elelmiszerlanc.kormany.hu/minosegpolitika

([3]) Cf. note 2.

Publication d'une demande de modification en application de l'article 50, paragraphe 2, point a), du règlement (UE) n° 1151/2012 du Parlement européen et du Conseil relatif aux systèmes de qualité applicables aux produits agricoles et aux denrées alimentaires

(2013/C 237/07)

La présente publication confère un droit d'opposition conformément à l'article 51 du règlement (UE) n° 1151/2012 du Parlement européen et du Conseil [1].

DEMANDE DE MODIFICATION

RÈGLEMENT (CE) N° 510/2006 DU CONSEIL

relatif à la protection des indications géographiques et des appellations d'origine des produits agricoles et des denrées alimentaires [2]

DEMANDE DE MODIFICATION CONFORMÉMENT À L'ARTICLE 9

«TERRA D'OTRANTO»

N° CE: IT-PDO-0117-1519-01.03.2011

IGP ( ) AOP (X)

1. **Rubrique du cahier des charges faisant l'objet de la modification**

— ☐ Dénomination du produit

— ☒ Description du produit

— ☐ Aire géographique

— ☒ Preuve de l'origine

— ☐ Méthode d'obtention

— ☐ Lien

— ☐ Étiquetage

— ☒ Exigences nationales

— ☒ Autres (à préciser)

2. **Type de modification(s)**

— ☐ Modification du document unique ou du résumé

— ☒ Modification du cahier des charges de l'AOP ou de l'IGP enregistrée, pour laquelle aucun document unique ni résumé n'a été publié

— ☐ Modification du cahier des charges n'entraînant aucune modification du document unique publié [article 9, paragraphe 3, du règlement (CE) n° 510/2006]

— ☐ Modification temporaire du cahier des charges résultant de l'adoption de mesures sanitaires ou phytosanitaires obligatoires par les autorités publiques [article 9, paragraphe 4, du règlement (CE) n° 510/2006]

[1] JO L 343 du 14.12.2012, p. 1.
[2] Remplacé par le règlement (UE) n° 1151/2012.

3. **Modifications**

3.1. *Description du produit*

Le cahier des charges a été modifié en y ajoutant les médianes des caractéristiques typiques qui suppriment la notation 6,5 (qui n'est plus pertinente), et en adoptant les dispositions prévues par la méthode COI/T20 Doc n° 22. En outre, certaines spécifications découlant de la prévalence de l'un des deux cultivars autochtones ont été insérées dans l'analyse sensorielle.

L'application de la nouvelle méthode aboutit à la description suivante:

— couleur: verte ou jaune avec de légers reflets verts;

— arôme: moyennement fruité (la médiane de la caractéristique est comprise entre 3 et 6) d'olive au degré de maturation approprié, avec une légère note de feuille;

— saveur: moyennement fruitée (la médiane de la caractéristique est comprise entre 3 et 6), avec une note d'olive au degré de maturation approprié. Sensation légère ou moyenne de piquant et d'amertume selon la période de la récolte (médiane des caractéristiques présentant des valeurs comprises entre 0 et 6). En fonction de la période de la récolte et de la prévalence des variétés, le goût fruité s'enrichit de notes de feuilles d'olivier, d'herbe fraîchement fauchée, de cardon/artichaut/chicorée pour le cultivar Ogliarola, ou de fruit/tomate/fruits des bois pour le cultivar Cellina.

Les paramètres chimiques ont été quelque peu modifiés en diminuant l'acidité maximale totale exprimée en acide oléique (de < 0,8 à < 0,65 actuellement) et en augmentant légèrement le contenu en acide linoléique (de ≤ 0,70 à ≤ 0,80) et la valeur de K232 (de ≤ 2,10 à ≤ 2,20). Ces modifications découlent de la tendance à augmenter la représentativité des deux cultivars les plus répandus dans l'aire géographique, le Cellina di Nardò et le Ogliarola Salentina, qui sont à l'origine des taux d'acide linoléique et de K232 légèrement différents dans les huiles issues d'une seule variété, auparavant très peu répandues.

3.2. *Preuve de l'origine*

Le cahier des charges a été modifié conformément aux dispositions prévues par le règlement (CE) n° 1898/2006, en y ajoutant les procédures que les opérateurs doivent mettre en œuvre afin d'établir la/les preuve(s) d'origine.

3.3. *Exigences nationales*

Les obligations découlant de la loi n° 169 du 15 février 1992 «Disciplina per il riconoscimento della denominazione di origine controllata degli oli di oliva vergini ed extravergini» et du Decreto Ministeriale n° 573/93 ont été supprimées.

3.4. *Autres*

L'association demandant les modifications est le Consorzio di tutela dell'olio extravergine di oliva D.O.P. «Terra d'Otranto», organisme habilité à présenter la demande de modification au sens de l'article 14 de la loi n° 526/1999, à ne pas confondre avec l'association APROL, qui a demandé l'enregistrement de l'AOP. Le Consorzio di tutela a été constitué après la date de la demande d'enregistrement de l'AOP «Terra d'Otranto» d'origine, qui avait été présentée alors par l'association APROL, qui représentait au moins sept associations de producteurs oléicoles.

DOCUMENT UNIQUE

RÈGLEMENT (CE) N° 510/2006 DU CONSEIL

relatif à la protection des indications géographiques et des appellations d'origine et des denrées alimentaires ([3])

«TERRA D'OTRANTO»

N° CE: IT-PDO-0117-1519-01.03.2011

IGP ( ) AOP (X)

1. **Dénomination**

«Terra d'Otranto»

2. **État membre ou pays tiers**

Italie

([3]) Cf. note 2.

3. **Description du produit agricole ou de la denrée alimentaire**

3.1. *Type de produit*

Classe 1.5. Huiles et matières grasses (beurre, margarine, huiles, etc.)

3.2. *Description du produit portant la dénomination visée au point 1*

«Terra d'Otranto» est une huile d'olive vierge extra qui présente les caractéristiques chimiques et organoleptiques suivantes:

— acidité maximale de 0,65 %;

— peroxydes ≤ 14 meq O2/kg;

— K232 ≤ 2,20

— K270 ≤ 0,170

— acide linoléique ≤ 0,8

— couleur: verte ou jaune avec des reflets verts;

— arôme: moyennement fruité (la médiane de la caractéristique est comprise entre 3 et 6) d'olive au degré de maturation approprié, avec une légère note de feuille;

— saveur: moyennement fruitée (la médiane de la caractéristique est comprise entre 3 et 6), avec une note d'olive au degré de maturation approprié.

Sensation légère ou moyenne de piquant et d'amertume selon la période de la récolte. En outre, en fonction de la période de la récolte et de la prévalence des variétés, le goût fruité s'enrichit de notes de feuilles d'olivier, d'herbe fraîchement fauchée, de cardon/artichaut/chicorée pour le cultivar *Ogliarola*, ou de fruit/tomate/fruits des bois pour le cultivar *Cellina*.

3.3. *Matières premières (uniquement pour les produits transformés)*

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3.4. *Aliments pour animaux (uniquement pour les produits d'origine animale)*

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3.5. *Étapes spécifiques de la production qui doivent avoir lieu dans l'aire géographique délimitée*

Les opérations de culture, de production et de trituration de l'huile d'olive vierge extra «Terra d'Otranto» doivent exclusivement avoir lieu dans l'aire géographique de production délimitée au point 4.

3.6. *Règles spécifiques applicables au tranchage, râpage, conditionnement, etc.*

L'huile d'olive vierge extra «Terra d'Otranto» doit être commercialisée dans des récipients en verre ou en fer-blanc dont la capacité n'excède pas 5 litres. Le conditionnement de l'huile d'olive vierge extra «Terra d'Otranto» doit avoir lieu dans l'aire géographique de production afin de mieux garantir le contrôle de l'origine du produit et d'empêcher que son transport en vrac hors de cette aire géographique n'entraîne la détérioration et la perte de ses caractéristiques particulières définies au point 3.2 ci-dessus, notamment les notes typiques de cardon/artichaut/chicorée de l'huile «Terra d'Otranto». La composition de l'huile, caractérisée par un niveau élevé d'acides gras polyinsaturés, la prédispose à perdre ses qualités organoleptiques et sa typicité sous l'action de l'oxygène présent dans l'air durant la phase de transvasement, de pompage, de transport et de déchargement, opérations qui se répètent plus fréquemment en cas de mise en bouteille hors de l'aire de production.

3.7. *Règles spécifiques d'étiquetage*

La dénomination «Terra d'Otranto» doit figurer sur l'étiquette en caractères clairs et indélébiles nettement distincts de toute autre mention apparaissant sur l'étiquette et doit être suivie immédiatement de la mention «Denominazione di origine protetta» ou de son sigle AOP en plus du symbole de l'UE correspondant.

Chaque emballage mis en vente doit porter un numéro d'ordre progressif attribué par l'emballeur sur la base des dispositions du plan de contrôle correspondant.

Il est interdit d'ajouter toute qualification quelle qu'elle soit qui n'est pas expressément prévue, y compris les adjectifs «fin», «choisi», «sélectionné», «supérieur».

L'utilisation d'indications faisant référence à des noms, des raisons sociales ou des marques privées est autorisée, pour autant que ces indications n'aient pas un caractère élogieux et qu'elles n'induisent pas le consommateur en erreur.

Il est obligatoire d'indiquer sur l'étiquette l'année de production des olives à partir desquelles l'huile est obtenue.

4. **Description succincte de la délimitation de l'aire géographique**

L'aire de production de l'AOP «Terra d'Otranto» comprend l'ensemble de la province de Lecce, ainsi qu'une partie de la province de Taranto et de celle de Brindisi. Cette aire s'étend en forme d'arc, entre la mer Ionienne et la mer Adriatique, des collines Murge Taratine et de l'extrémité des flancs des Murge au sud-est de Brindisi, en passant par la plaine (*tavoliere*) de Lecce, et se termine dans les collines des Serre, à la confluence des deux mers.

5. **Lien avec l'aire géographique**

5.1. *Spécificité de l'aire géographique*

Le produit doit ses caractéristiques aux conditions pédoclimatiques particulières qui règnent dans l'aire: les facteurs environnementaux et les cultivars spécifiques de ce territoire confèrent un caractère distinctif à l'huile «Terra d'Otranto». Les sols présentent, sur une grande échelle, une remarquable uniformité provenant des calcaires du crétacé sur lesquels sont venues se poser des couches de calcaire du tertiaire avec des sédiments calcaires et sablo-argileux datant du pliocène et du pléistocène. Ils sont composés de terres brunes ou rouges souvent présentes en couches alternées et reposant sur des roches calcaires. Du point de vue du relief, l'aire se caractérise par de vastes plaines délimitées et interrompues par des collines basses et douces. L'aire de production est dépourvue de cours d'eau superficiels, mais est dotée d'un vaste réseau hydrique souterrain, qui confère à toute la région un caractère définitivement karstique. L'aire étant située sur le littoral, à une faible latitude, elle jouit d'un climat doux, à tendance chaude.

5.2. *Spécificité du produit*

Le patrimoine oléicole de l'aire géographique se distingue par la prépondérance des variétés autochtones Cellina di Nardò et Ogliarola leccese, qui caractérisent qualitativement l'huile produite. L'indication du pourcentage minimal de 60 % de ces deux cultivars contribue à déterminer les caractéristiques organoleptiques des huiles qui, selon la prévalence d'une variété par rapport à l'autre, passent d'une note de cardon/artichaut/chicorée à une note de fruit/tomate/fruits des bois.

5.3. *Lien causal entre l'aire géographique et la qualité ou les caractéristiques du produit (pour les AOP), ou une qualité spécifique, la réputation ou une autre caractéristique du produit (pour les IGP)*

L'oléiculture est le principal secteur de production de la région et revêt un rôle fondamental dans l'économie locale. L'indication géographique «Terra d'Otranto» comprenait encore au XIX^{e} siècle les provinces actuelles de Lecce, Brindisi et Taranto. Cette région a toujours été caractérisée par la présence importante de l'olivier, dont le fruit permet d'extraire un «liquide de grande valeur». L'origine de la dénomination «Terra d'Otranto» se confond avec l'histoire même de l'oléiculture dans cette région, qui y fut introduite il y a très longtemps par les colons phéniciens et grecs et qui a donné lieu, grâce au travail des moines brésiliens qui s'y installèrent au X^{e} siècle, au premier marché florissant d'huiles de qualité provenant de la Terra d'Otranto. «Terra d'Otranto» correspond au terme utilisé au Moyen Âge pour désigner la péninsule Salentine (*il Salento*), étant donné qu'Otranto était à l'époque le chef-lieu de la région.

Référence à la publication du cahier des charges

[article 5, paragraphe 7, du règlement (CE) n^{o} 510/2006 ([4])]

La présente administration a lancé la procédure nationale d'opposition en publiant la demande de modification du cahier des charges de production de l'appellation d'origine protégée «Terra d'Otranto» au *Journal officiel de la République italienne* n^{o} 297 du 21 décembre 2010. Le texte consolidé du cahier des charges de production peut être consulté sur le site internet:

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

ou en accédant directement à la page d'accueil du site du ministère des politiques agricoles, alimentaires et forestières (http://www.politicheagricole.it) et en cliquant sur «Qualità e sicurezza» (en haut à gauche de l'écran) et enfin sur «Disciplinari di produzione all'esame dell'UE».

([4]) Cf. note 2.

Publication d'une demande en vertu de l'article 50, paragraphe 2, point b), du règlement (UE) n° 1151/2012 du Parlement européen et du Conseil relatif aux systèmes de qualité applicables aux produits agricoles et aux denrées alimentaires

(2013/C 237/08)

La présente publication confère un droit d'opposition au sens de l'article 51 du règlement (UE) n° 1151/2012 du Parlement européen et du Conseil [1].

DEMANDE D'ENREGISTREMENT STG

RÈGLEMENT (CE) N° 509/2006 DU CONSEIL

relatif aux spécialités traditionnelles garanties des produits agricoles et des denrées alimentaires [2]

«ŽEMAITIŠKAS KASTINYS»

N° CE: LT-TSG-0007-0910-11.11.2011

1. **Nom et adresse du groupement demandeur**

Nom du groupement ou de l'organisation (le cas échéant): «Žemaitiško kastinio gamintojai»

Adresse:	Sedos g. 35 LT-87101 Telšiai LIETUVA/LITHUANIA
Tél.	+370 44422201
Fax	+370 44474897
Courriel:	info@zpienas.lt

2. **État membre ou pays tiers**

Lituanie

3. **Cahier des charges**

3.1. *Nom(s) à enregistrer [article 2 du règlement (CE) n° 1216/2007 de la Commission]*

«Žemaitiškas kastinys»

3.2. *Nom*

☒ est spécifique en soi

☐ indiquer la spécificité du produit agricole ou de la denrée alimentaire

Le nom «Žemaitiškas kastinys» ne renvoie pas aux caractéristiques spécifiques du produit, mais il est bien établi et très connu tant en Samogitie (région occidentale de la Lituanie) que dans le reste de la Lituanie pour désigner traditionnellement ce produit, comme il ressort des différentes sources mentionnées au point 3.8.

Le nom «Žemaitiškas kastinys» (kastinys de Samogitie) figure dans le livre de recettes culinaires du XX^{e} siècle «Gaspadinystės knyga arba Pamokinimai kaip prigulinčiai yra sutaisomi valgiai» (Tilžė, 1927), dans le livre «Que mangeons-nous ?» du Dr Tumėnienė e. a. («Ką valgome», Kaunas, 1935), et dans le livre «La cuisine lituanienne» de J. Pauliukonienė («Lietuvių valgiai», Vilnius, 1983).

3.3. *Demande de réservation du nom conformément à l'article 13, paragraphe 2, du règlement (CE) n° 509/2006*

☒ enregistrement accompagné de la réservation du nom

☐ enregistrement non accompagné de la réservation du nom

3.4. *Type de produit (voir annexe II)*

Classe 1.4. Autres produits d'origine animale (œufs, miel, produits laitiers sauf beurre, etc.)

[1] JO L 343 du 14.12.2012, p. 1.
[2] Remplacé par le règlement (UE) n° 1151/2012.

3.5. *Description du produit agricole ou de la denrée alimentaire portant le nom visé au point 3.1 [article 3, paragraphe 1, du règlement (CE) n° 1216/2007 de la Commission]*

Le «Žemaitiškas kastinys» est un produit traditionnel consistant en une crème fouettée à chaud puis refroidie.

Le «Žemaitiškas kastinys» se caractérise par sa texture homogène et épaisse; à une température de + 6 °C, il est friable, d'une texture comparable à une crème rigide avec des gouttelettes éparses, et est très fondant en bouche. La couleur est totalement uniforme: jaunâtre. En fonction des épices utilisées, le «Žemaitiškas kastinys» peut présenter des nuances correspondant à celles-ci et contenir des petits morceaux d'épices. Le goût est celui, légèrement acidulé, de l'acide lactique, il est également légèrement salé; on sent les épices.

Propriétés physico-chimiques du «Žemaitiškas kastinys»:

— lipides, en fonction de la recette: 25 à 30 %;

— teneur en sel alimentaire: 1 à 1,5 %.

3.6. *Description de la méthode d'obtention du produit agricole ou de la denrée alimentaire portant le nom visé au point 3.1 [article 3, paragraphe 2, du règlement (CE) n° 1216/2007 de la Commission]*

Matières premières:

— crème aigre, dont la teneur en matières grasses est comprise entre 25 et 30 %: 80 kg à 83 kg/100 kg de produit;

— beurre, dont la teneur en matières grasses n'est pas inférieure à 82 %: 6 kg à 7 kg/100 kg de produit;

— lait caillé, dont la teneur en matières grasses est comprise entre 2,5 et 4 %: 5 kg à 5,5 kg/100 kg de produit;

— sel alimentaire: 1 kg à 1,5 kg/100 kg de produit.

Il est possible d'utiliser des épices (poivre noir, poivre de la Jamaïque, cumin, aneth, menthe ou un mélange de ces épices: 0,1 à 0,15 kg/100 kg de produit) et des légumes aromatiques (ail ou oignons: 1 kg à 2 kg/100 kg de produit).

Méthode de production:

Le «Žemaitiškas kastinys» est produit selon des méthodes traditionnelles.

Les ingrédients sont pesés en respectant la recette. La crème aigre est remuée avec du lait caillé dans un récipient distinct et est portée à une température comprise entre 25 °C et 30 °C. Le beurre froid est ramolli en l'amenant à une température comprise entre 25 et 30 °C. Les légumes aromatiques sont lavés et hachés finement.

Le beurre réchauffé et ramolli est versé selon la recette dans le plat destiné à la fabrication du produit. Le mélange crème aigre — lait caillé est versé progressivement, par huitième de la quantité prévue par la recette et est tourné à la main ou par un mécanisme équivalent. Le «Žemaitiškas kastinys» est toujours mélangé dans la même direction. Une fois obtenue la consistance de la crème aigre (sans produire de babeurre), on ajoute à nouveau un huitième du mélange crème aigre — lait caillé et on continue de tourner. On répète ce processus jusqu'à ce que tout le mélange crème aigre-lait caillé soit versé (en fonction de la recette). Lorsque le «Žemaitiškas kastinys» commence à se solidifier, on le sale, on verse les épices et les légumes aromatiques hachés, tout en continuant à remuer. Le «Žemaitiškas kastinys» doit être emballé juste avant qu'il ne durcisse.

Le «Žemaitiškas kastinys» est emballé dans de petites terrines en terre cuite ou dans des récipients individuels de 250 g, 200 g et 100 g. Les terrines sont recouvertes d'un petit couvercle en terre cuite, d'un cache-couvercle et d'un cordon noué autour de celui-ci. Les récipients individuels sont fermés par un couvercle en papier d'aluminium. Une fois emballé, le «Žemaitiškas kastinys» est refroidi à 6 °C. Une fois refroidi, le produit acquiert sa consistance homogène et rigide.

3.7. *Spécificité du produit agricole ou de la denrée alimentaire [article 3, paragraphe 3, du règlement (CE) n° 1216/2007 de la Commission]*

Le «Žemaitiškas kastinys» se distingue des autres produits de la même catégorie par les caractéristiques suivantes:

— ses composants traditionnels et sa méthode de production: contrairement aux autres types de kastinys, la recette du «Žemaitiškas kastinys» n'a quasiment pas changé depuis ses premières mentions dans les sources écrites mentionnées au point 3.8; les mêmes ingrédients sont utilisés dans des proportions presque identiques. Entre-temps, on a vu apparaître ultérieurement d'autres

types de kastinys: pour obtenir des qualités gustatives plus variées, la crème aigre est totalement substituée par du lait caillé ou est mélangée avec du képhir; des betteraves rouges, ou du jus de carotte, ou encore du jaune d'œuf peuvent être ajoutés, ce qui donne au kastinys une couleur rouge ou jaune. La production du «Žemaitiškas kastinys» se caractérise par le lent brassage circulaire constant du mélange de beurre et de crème aigre pendant lequel le mélange crème aigre — lait caillé est versé en 8 fois, en veillant très attentivement à la régulation de la température (25-30 °C) de telle manière qu'aucun babeurre n'est produit. La production des autres types de kastinys est modernisée, on utilise le fouettement au lieu du brassage; de plus, tous les ingrédients sont versés en 3-4 fois ou même en une seule fois; aussi la température peut-elle fluctuer davantage;

— son goût — le goût du «Žemaitiškas kastinys» est celui, légèrement acidulé, de l'acide lactique, il est légèrement salé; on sent des épices ou des plantes aromatiques. Les autres types de kastinys se caractérisent par le goût acide plutôt âpre de l'acide lactique (si la crème aigre est substituée par du lait caillé); ou par celui de l'acide lactique avec un arrière-goût de levure (si la crème aigre est substituée par képhir); on sent aussi le goût caractéristique du jus (de betterave rouge ou de carotte), ou du jaune d'œuf;

— sa texture — le «Žemaitiškas kastinys» se caractérise par sa texture épaisse et homogène; à une température de + 6 °C, il est friable, d'une texture comparable à une crème rigide avec des gouttelettes éparses, et est très fondant en bouche. Les autres types de kastinys se caractérisent par leur texture molle, tartinable.

3.8. *Caractère traditionnel du produit agricole ou de la denrée alimentaire [article 3, paragraphe 4, du règlement (CE) n° 1216/2007 de la Commission]*

Outre la méthode de fabrication du beurre primitive largement répandue dans toute la Lituanie, qui consiste à battre la crème aigre dans un plat à l'aide d'une cuiller, c'est seulement dans la région de Samogitie qu'est apparue une technique originale de préparation de la crème aigre, qui s'est répandue dans toute la Lituanie, consistant à tourner la crème aigre à chaud tout en s'assurant qu'elle ne devienne pas du babeurre. On obtient ainsi le produit de ce goût et de cette consistance spécifiques — le «Žemaitiškas kastinys» («Atlas de la langue lituanienne», «Lietuvių kalbos atlasas» T. 1. Leksika, Vilnius, 1977). Ce produit est décrit dans les ouvrages scientifiques du 19e siècle (Liudwik Adam Jucewicz (Liudwik z Pokiewia). Litwa pod wzgledem starozytnych zabytkow, obyczajow i zwyczajow skreslona, Wilno, 1846; Leon Potocki. Pamiętniki Pana Kamertona, Poznan, 1869), l'accent étant mis sur sa méthode de fabrication (produit à partir de la crème aigre réchauffée) et sur son goût très savoureux.

Les récits des personnes nées à la fin du 19e siècle et au début du 20e siècle, qui sont conservés au Musée national de Lituanie (fonds de la section ethnographique du Musée national de Lituanie F 15-4; F 15-13; F 32-7; F 32-48) décrivent la méthode de fabrication et la recette: dans un plat en terre cuite réchauffé, d'abord verser trois cuillerées de crème aigre et une demi-cuillerée de beurre. Bien remuer le tout et à l'aide d'une cuiller en bois, tourner toujours dans la même direction. Lorsque la masse remuée commence à refroidir, sans ressembler à du babeurre, réchauffer le plat dans l'eau chaude, et verser la masse ainsi liquéfiée dans le plat contenant l'eau froide. Tout en mélangeant, verser la crème aigre dans la masse en petites portions. Une partie de la crème aigre devient souvent du lait caillé, c'est pourquoi le kastinys est plus maigre. En terminant de battre la crème, ajouter le sel et les autres épices (cumin, poivre moulu, ail et oignons hachés, vert d'oignon en saison, pousses de fenouil ou de menthe).

Dans le livre écrit en 1983 par des scientifiques et intitulé «La cuisine lituanienne» («Lietuvių valgiai», compilé par J. Pauliukonienė, « Mokslas », Vilnius, 1983), qui décrit les anciennes techniques traditionnelles de préparation des matières premières, par lesquelles la crème aigre était séparée du lait manuellement (à l'aide d'une cuiller), du lait caillé restant naturellement présent, figure la recette du «Žemaitiškas kastinys» et sa méthode de production: «Žemaitiškas kastinys» — ½ l de crème aigre, 1 cuillerée de beurre, ½ cuillère de cumin ou autres épices, sel. Le beurre et une cuillerée de crème aigre sont versés dans un plat en terre cuite, le plat est ensuite placé dans l'eau chaude et on tourne avec une cuiller en bois. Peu après (avant que le babeurre se forme), on ajoute une cuillerée de crème aigre de plus et on tourne jusqu'à ce que toute la crème aigre soit versée. Lorsque la masse commence à s'épaissir, on ajoute du sel et du cumin lavé et séché, et on remue bien le tout. Le goût du «Žemaitiškas kastinys» est légèrement salé et un peu acide.

La méthode de préparation et la recette du «Žemaitiškas kastinys» sont restées inchangées jusqu'à ce jour, comme le démontre le certificat qui a été attribué en Lituanie à ce produit en 2010 par «VŠĮ "Kulinarinio paveldo fondas"» (Fonds du patrimoine culinaire), qui confirme que la production du «Žemaitiškas kastinys» se fait selon les technologies traditionnelles, avec des matières premières, des ingrédients et des équipements traditionnels.

3.9. *Exigences minimales et procédures en matière de contrôle de la spécificité [article 4, du règlement (CE) n° 1216/2007 de la Commission]*

Compte tenu des caractéristiques spécifiques du «Žemaitiškas kastinys», sont contrôlés:

1) qualité des matières premières de chaque lot:

— la teneur en matières grasses de la crème aigre et du lait caillé doit correspondre à la teneur en matières grasses de la crème aigre et du lait caillé indiquée au point 3.6; elle est contrôlée en laboratoire;

— la teneur en matières grasses du beurre doit correspondre à la teneur en matières grasses du beurre indiquée au point 3.6; elle est contrôlée en laboratoire;

— les caractéristiques organoleptiques des épices et des légumes aromatiques (goût, arôme, couleur) sont contrôlées selon les documents et de manière organoleptique;

2) conformité à la méthode de production technologique indiquée au point 3.6: la succession des étapes du processus technologique et le respect des paramètres définis (température des ingrédients et proportions) sont contrôlés visuellement et par des mesures lors du processus de production de chaque lot;

3) qualité du produit final de chaque lot:

— les caractéristiques organoleptiques (texture, couleur, goût) doivent correspondre aux caractéristiques organoleptiques indiquées au point 3.5, elles sont contrôlées par l'analyse organoleptique;

— la teneur en lipides doit correspondre à la teneur en lipides indiquée au point 3.5, elle est contrôlée en laboratoire;

— la teneur en sel alimentaire doit correspondre à la teneur indiquée au point 3.5, elle est contrôlée selon la recette; en cas de doute, elle est contrôlée en laboratoire.

Au moins une fois par an, l'autorité indiquée au point 4.1 contrôle la conformité du produit et de son processus de production aux exigences du cahier des charges.

4. **Autorités ou organismes chargés de vérifier le respect du cahier des charges**

4.1. *Nom et adresse*

Intitulé: Valstybinė maisto ir veterinarijos tarnyba

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

Tél. +370 52404361
Courriel: vvt@vet.lt

☒ Public ☐ Privé

4.2. *Tâches spécifiques de l'autorité ou de l'organisme*

La structure de contrôle indiquée au point 4.1 est responsable du contrôle de toutes les conditions définies dans le cahier des charges.

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