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Legislation

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Contents

[1] Text with EEA relevance

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

Corrigenda

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2016/337

of 2 March 2016

approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Karlovarský suchar (PGI))

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ([1]), and in particular Article 52(2) thereof,

Whereas:

(1) Pursuant to the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined the Czech Republic's application for the approval of amendments to the specification for the protected geographical indication 'Karlovarský suchar', registered under Commission Regulation (EC) No 982/2007 ([2]).

(2) Since the amendments in question are not minor within the meaning of Article 53(2) of Regulation (EU) No 1151/2012, the Commission published the amendment application in the *Official Journal of the European Union* as required by Article 50(2)(a) of that Regulation ([3]).

(3) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the specification published in the *Official Journal of the European Union* regarding the name 'Karlovarský suchar' (PGI) are hereby approved.

Article 2

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

([1]) OJ L 343, 14.12.2012, p. 1.
([2]) Commission Regulation (EC) No 982/2007 of 21 August 2007 registering certain names in the Register of protected designations of origin and protected geographical indications (Pimentón de la Vera (PDO) — Karlovarský suchar (PGI) — Riso di Baraggia biellese e vercellese (PDO)) (OJ L 217, 22.8.2007, p. 22).
([3]) OJ C 353, 24.10.2015, p. 6.

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

Done at Brussels, 2 March 2016.

For the Commission,
On behalf of the President,
Phil HOGAN
Member of the Commission

COMMISSION IMPLEMENTING REGULATION (EU) 2016/338

of 9 March 2016

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([1]),

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ([2]), and in particular Article 136(1) thereof,

Whereas:

(1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

(2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 9 March 2016.

For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development

([1]) OJ L 347, 20.12.2013, p. 671.
([2]) OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	IL	236,2
	MA	100,3
	TN	112,1
	TR	102,5
	ZZ	137,8
0707 00 05	MA	84,5
	TR	159,7
	ZZ	122,1
0709 93 10	MA	66,7
	TR	154,8
	ZZ	110,8
0805 10 20	EG	43,7
	IL	77,0
	MA	53,6
	TN	56,9
	TR	64,2
	ZZ	59,1
0805 50 10	MA	108,5
	TR	88,9
	ZZ	98,7
0808 10 80	CL	93,0
	CN	66,5
	US	152,0
	ZZ	103,8
0808 30 90	AR	145,1
	CL	134,7
	CN	112,4
	TR	153,5
	ZA	90,6
	ZZ	127,3

(1) Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2016/339

of 8 March 2016

on the harmonisation of the 2 010-2 025 MHz frequency band for portable or mobile wireless video links and cordless cameras used for programme making and special events

(notified under document C(2016) 1197)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community ('Radio Spectrum Decision') ([1]), and in particular Article 4(3) thereof,

Whereas:

(1) The use of the 1 900-1 980 MHz, 2 010-2 025 MHz and 2 110-2 170 MHz frequency bands (altogether referred to as 'the 2 GHz band') had been coordinated under Decision No 128/1999/EC of the European Parliament and of the Council ([2]). This Decision expired on 22 January 2003, but the Member States continue to use this spectrum in a harmonised manner.

(2) The use of the paired 1 920-1 980 MHz and 2 110-2 170 MHz sub-band ('the paired terrestrial 2 GHz band') has subsequently been harmonised under Commission Implementing Decision 2012/688/EU ([3]) in line with technological evolution and the principles of technology and service neutrality.

(3) The unpaired part of the terrestrial 2 GHz band comprising the 1 900-1 920 MHz and 2 010-2 025 MHz frequency bands, which had been assigned to mobile operators in the Union, has remained unused by mobile networks for more than 10 years in most Member States, resulting in valuable spectrum being underused. This underuse justifies new harmonisation measures to ensure that spectrum is effectively and efficiently used in line with the objectives of the multiannual Radio Spectrum Policy Programme ('RSPP') ([4]). These measures in particular seek sufficient spectrum to support programme making and special events (PMSE), in accordance with the internal market and access to culture objective and to develop public protection and disaster relief (PPDR).

(4) In response to the Commissions' mandate issued in 2011 under Article 4(2) of Decision No 676/2002/EC relating to technical conditions for spectrum harmonisation options for wireless radio microphones and cordless video cameras ([5]), the European Conference of Postal and Telecommunications administrations ('CEPT') submitted its Report 51 ([6]) identifying the 2 010-2 025 MHz frequency band and other frequency bands as possible new

([1]) OJ L 108, 24.4.2002, p. 1.
([2]) Decision No 128/1999/EC of the European Parliament and of the Council of 14 December 1998 on the coordinated introduction of a third-generation mobile and wireless communications system (UMTS) in the Community (OJ L 17, 22.1.1999, p. 1).
([3]) Commission Implementing Decision 2012/688/EU of 5 November 2012 on the harmonisation of the frequency bands 1 920-1 980 MHz and 2 110-2 170 MHz for terrestrial systems capable of providing electronic communications services in the Union (OJ L 307, 7.11.2012, p. 84).
([4]) Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme (OJ L 81, 21.3.2012, p. 7).
([5]) Mandate to the CEPT, dated 15 December 2011, RSCOM11-59 final.
([6]) On technical conditions for ensuring the sustainable operation of cordless video-cameras, report approved by the Electronic Communications Committee ('ECC') on 8 November 2013.

spectrum for wireless cameras and video links, subject to further studies. The Commission therefore issued in October 2012 ([1]) a further mandate to the CEPT to carry out studies on harmonised technical conditions for the 1 900-1 920 MHz and 2 010-2 025 MHz frequency bands in the EU. As a result, on 6 March 2015 the CEPT issued its Report 52 ([2]) which identifies alternative potential uses for these unpaired terrestrial 2 GHz bands to implement policies highlighted by the RSPP in relation to PMSE and PPDR.

(5) As identified by CEPT reports, the categories of portable or mobile wireless video links and cordless cameras that can be used for programme making and special events ('video PMSE') may include among others cordless cameras as handheld or otherwise mounted cameras with integrated or clip-on transmitters, power packs and antennae for carrying broadcast-quality videos together with sound signals over short-ranges, line-of-sight and non-line-of-sight; portable video links via small transmitters, for deployment over greater ranges, typically up to two kilometres, and mobile video links such as video transmission systems with radio transmitter and receivers mounted in or on motorcycles, racing motorbikes, pedal cycles, cars, boats, helicopters, airships or other aircraft, with the possibility that one or both link terminals may be used while moving.

(6) Using the 2 010-2 025 MHz frequency band for video links and cordless cameras has the technical and economic advantages of benefitting from the neighbouring 2 025-2 110 MHz frequency band, which is also used for such links and cordless cameras in a number of Member States and is identified in the ERC Recommendation 25-10 ([3]) as a recommended tuning range. Since CEPT Report 52 confirms that video PMSE may operate in the 2 010-2 025 MHz frequency band under the same technical conditions as those applicable to PMSE use in the 2 025-2 110 MHz band, this would extend the spectrum availability for video links and cordless cameras from a range of 85 MHz up to a range of 100 MHz.

(7) Although in most Member States the 2 010-2 025 MHz frequency band has either not been assigned to or has not been used by mobile operators for many years, in some cases the spectrum is in use by incumbent services; this situation may require a flexible approach and local arrangements that take account of factors such as the location where spectrum is used as well as the technical characteristics of the use of spectrum for video PMSE in the 2 010-2 025 MHz frequency band, both in the relevant Member State and in neighbouring Member States.

(8) Moreover, the availability and use of the 2 010-2 025 MHz frequency band for video PMSE should be on a non-exclusive basis, so that Member States may allow on a national basis the use of that spectrum for other types of applications such as public protection and disaster relief or temporary point-to-point video links or industrial cameras, as long as these applications would comply with the technical parameters set out in this Decision.

(9) Harmonised conditions across the Union would help establish an effective single market for those applications, with economies of scale and benefits to Union citizens and industry alike, in line with the Radio Equipment and Telecommunications Terminal Equipment Directive (Directive 1999/5/EC of the European Parliament and of the Council) ([4]) and the Radio Equipment Directive (Directive 2014/53/EU of the European Parliament and of the Council) ([5]).

(10) In order to also ensure the effective use of the 2 010-2 025 MHz frequency band in the long term, Member States should keep the use of the 2 010-2 025 MHz frequency band under scrutiny and report their findings to the Commission.

([1]) RSCOM12-17 rev 3 adopted on 10 October 2012.

([2]) Report 52 from CEPT to the European Commission in response to the Mandate 'To undertake studies on the harmonised technical conditions for the 1 900-1 920 MHz and 2 010-2 025 MHz frequency bands ("Unpaired terrestrial 2 GHz bands") in the EU', report approved on 6 March 2015 by ECC.

([3]) ERC Recommendation 25-10 on frequency ranges for the use of temporary terrestrial audio and video Service Ancillary to Broadcasting/Services Ancillary to Programme making (SAP/SAB) links (incl. Electronic News Gathering and Outside Broadcasting (ENG/OB)).

([4]) Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ L 91, 7.4.1999, p. 10).

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

(11) The measures provided for in this Decision are in accordance with the opinion of the Radio Spectrum Committee,

HAS ADOPTED THIS DECISION:

Article 1

The purpose of this Decision is to harmonise the technical conditions for the availability and efficient use of the 2 010-2 025 MHz frequency band for video PMSE on a non-exclusive basis.

Article 2

For the purposes of this Decision, video PMSE means wireless video links that can be portable or mobile and cordless cameras, used for programme making and special events.

Article 3

As early as possible, and no later than six months after the date of notification of this Decision, Member States shall designate and make available the 2 010-2 025 MHz frequency band for video PMSE, on a non-exclusive basis, in accordance with the parameters set out in the annex.

Upon detection of interference to other types of spectrum users or services that are entitled to use the 2 010-2 025 MHz frequency band at the date when this Decision takes effect, Member States may restrict the use of video PMSE in the relevant portion of the frequency band in specific geographic areas in accordance with the annex.

Article 4

Member States shall keep the use of the 2 010-2 025 MHz frequency band under scrutiny and report their findings to the Commission, including any information on the amendment or withdrawal of rights of use, in order to allow a timely review of this Decision if necessary.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 8 March 2016.

For the Commission
Günther OETTINGER
Member of the Commission

ANNEX

PARAMETERS REFERRED TO IN ARTICLE 3

For the purpose of this Annex, e.i.r.p. means equivalent isotropically radiated power, which is the product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna (absolute or isotropic gain).

e.i.r.p. for video PMSE

Type of Link	e.i.r.p.
Cordless camera	– 7 dBW
Portable video link	16 dBW
Mobile video link	10 dBW

Access to spectrum may be predominantly authorised under local arrangements. Those local arrangements may be configured to take account of such factors as the location where spectrum is used as well as the technical characteristics of the use of spectrum for video PMSE, or for incumbent services.

Member States may adapt the e.i.r.p limits for video PMSE set in the table if local circumstances in the relevant Member State and in neighbouring Member States allow for higher limits without compromising the coexistence of existing services.

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 404/14/COL

of 8 October 2014

on the Investment Incentive Scheme in Iceland (Iceland) [2016/340]

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 thereto,

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 thereof,

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), in particular to Article 1(2) of Part I and Articles 7(5) and 14 of Part II thereof,

HAVING called on interested parties to submit their comments pursuant to those provisions ([1]) and having regard to their comments,

Whereas:

I. **FACTS**

1. CHRONOLOGY OF EVENTS

(1) On 13 October 2010, the Authority approved a scheme on investment incentives (the 'Scheme') which was notified by the Icelandic authorities pursuant to Article 1(3) of Part I of Protocol 3. The Authority's approval was given in Decision No 390/10/COL ([2]).

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

(3) The Scheme expired on 31 December 2013.

([1]) The Authority's Decision of 30 April 2013 to initiate the formal investigation procedure with regards to Investment Incentives Scheme and certain Investment Agreement (OJ C 237, 15.8.2013, p. 4, and EEA Supplement No 45, 15.8.2013, p. 1).

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

(4) The legal basis for the Scheme as approved by the Authority was:

(a) Act No 99/2010 on Incentives for Initial Investments in Iceland ('Act No 99/2010'), adopted by the Icelandic Parliament on 29 June 2010 and entered into effect 3 July 2010, conditional upon the approval of the Authority; and

(b) Regulation (EC) No 985/2010 on Incentives for Initial Investments in Iceland, issued by the Ministry of Industry on 25 November 2010 (the 'Incentives Regulation'), corresponding to a draft regulation which was submitted to the Authority on 27 September 2010. The Incentives Regulation is a piece of secondary legislation, based on Act No 99/2010.

(5) On 30 December 2010 the Ministry of Industry issued a new regulation, Regulation (EC) No 1150/2010 (the 'Supplementary Regulation'), amending the Incentives Regulation. Pursuant to Article 1(3) of Part I of Protocol 3, the Supplementary Regulation should have been notified to the Authority. However, the Authority received no notification.

(6) During the period 2010 to 2013, the Icelandic State entered into a number of agreements which it considered as falling under the Scheme, and thereby being eligible for a grant of aid made under that Scheme. They are as follows ([3]):

(a) on 30 December 2010 the Minister of Industry, on behalf of the Icelandic Government, entered into an investment agreement with Becromal Iceland ehf. and Becromal Properties ehf. (now Krossaneseignir ehf.) (together referred to as 'Becromal'), Stokkur Energy ehf. and Becromal S.p.A. (the 'Becromal Investment Agreement');

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

(c) on 17 February 2011 the Minister of Industry, Energy and Tourism and the Minister of 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 (the 'Kísilfélagið Investment Agreement');

(d) on 22 September 2011 the Minister of Industry, Energy and Tourism, on behalf of the Icelandic Government, entered into an investment agreement with Verne Real Estate II ehf. and Verne Holdings Ltd (the 'Verne Investment Agreement');

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

(f) on 28 January 2013 the Minister of Industry, on behalf of the Icelandic Government, entered into an investment agreement with Marmeti ehf. (the 'Marmeti Investment Agreement').

2. PROCEDURE

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

(8) During the preliminary examination of the notified amendments, the Authority noticed the non-notified amendments which had been made to the Incentives Regulation. Further investigation indicated, moreover, a number of potential issues concerning the compatibility with EEA law of the investment agreements concluded during 2010-13, ostensibly under the Scheme.

([3]) 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 in English and in Icelandic at: http://stjornartidindi.is/AdvertList.aspx?ID=7F3926F3-992D-4211-903D-D4F28F1DC87A&view=2&value=ddc9274e-1111-44ac-9d52-5ffa832684fc

(9) By Decision No 177/13/COL of 30 April 2013, the Authority opened the formal investigation with regards to the Scheme and the investment agreements (the 'Opening Decision') ([4]). The Icelandic authorities and Becromal submitted comments to the Opening Decision ([5]). By a letter dated 10 October 2013, the Authority forwarded the comments submitted by Becromal to the Icelandic authorities and invited them to present their observations on these comments. However, no further observations were submitted by the Icelandic authorities.

(10) The matter was also discussed at a meeting in Brussels on 29 April 2014 between the Authority and representatives of Becromal.

3. DESCRIPTION OF THE MEASURES

3.1. *Background*

(11) The Scheme aimed to promote initial investment and thereby to create jobs in the disadvantaged regions in Iceland.

(12) The present decision concerns three sets of measures taken in Iceland with regard to the Scheme: (i) the notified amendments; (ii) the non-notified amendments; and (iii) the investment agreements. In the Opening Decision the Authority expressed doubts as to whether the measures complied with the functioning of the EEA Agreement, and as to whether aid granted under the investment agreements was granted within the scope of the Scheme as approved.

3.2. *The notified amendments to the Scheme*

(13) On 30 November 2012 the Icelandic Government submitted a bill to the Parliament, proposing a series of amendments to the existing aid 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, on the basis that it would only enter into force once the Authority had given a decision approving the amendments. The notified amendments, as described in more detail in the Opening Decision ([6]), related to:

(a) the abolition of direct grants;

(b) the reduction of the corporate income tax rate to 18 %;

(c) the abolition of stamp duties;

(d) the reduction of the municipal property tax rate for new investment projects by 50 %;

(e) the reduction of the general social security charge for new investment projects by 50 %.

(14) These amendments did not enter into force before the expiry of the Scheme.

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

(15) The Icelandic Government introduced the Supplementary Regulation shortly after the Authority's approval of the Scheme.

(16) The Supplementary Regulation amended a number of provisions of the Incentives Regulation, which set out the conditions for granting aid under Act No 99/2010.

([4]) Available at www.eftasurv.int
([5]) See Section I.5 below.
([6]) See recitals 14 to 15.

(17) First, the Supplementary Regulation affected the application of the incentive effect test under the Scheme, as set out in Article 3 of the Incentives Regulation, by adding a reference to 'a special investment agreement' entered into prior to the entry into force of Act No 99/2010 ([7]). As stated in the Opening Decision, the Authority's preliminary understanding was that this amendment allows aid to be granted to projects which were started before the Scheme entered into force.

(18) Second, the Supplementary Regulation amended Article 8 of the Incentives Regulation by referring to the maximum corporate tax applicable '[…] according to a special investment agreement prior to entry into force of the Act' ([8]). The Authority in the Opening Decision took the preliminary view that this amendment also appeared to allow for a retroactive application of the Scheme, by means of using the corporate tax rate applicable before the start of the Scheme.

(19) Third, the Supplementary Regulation amended Article 20 of the Incentives Regulation. This amendment affected the date for calculating the maximum duration of the tax exemptions allowed under the Scheme ([9]). As the Authority noted in the Opening Decision, this appeared 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.

3.4. *The investment agreements*

(20) The Icelandic authorities provided the Authority with copies of six Investment Agreements, listed below:

	Date	Agreement	Project
1	30 December 2010	The Becromal Investment Agreement	Aluminium foil anodizing plant in the town of Akureyri
2	30 December 2010	The Thorsil Investment Agreement	Silicon metal production in Þorlákshöfn in the municipality of Ölfus
3	17 February 2011	The Kísilfélagið Investment Agreement	Silicon metal production in Helguvík in the municipality of Reykjanesbær

([7]) Authority's translation, with the text added by the Supplementary Regulation underlined:
'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.'.

([8]) Authority's translation, with the text added by the Supplementary Regulation underlined:
'Article 8 — Aid relating to taxes and any other 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.'.

([9]) Authority's translation, with the text added by the Supplementary Regulation underlined:
'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 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.'.

	Date	Agreement	Project
4	27 September 2011	The Verne Investment Agreement	Data centre in the municipality of Reykjanesbær
5	7 May 2012	The GMR Endurvinnslan Investment Agreement	Steel recycling plant at Grundartangi in the municipality of Hvalfjarðarsveit
6	28 January 2013	The Marmeti Investment Agreement	Fish factory in the town of Sandgerði

4. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

(21) As regards the notified amendments set out in Act No 25/2013, the Authority's preliminary view in the Opening Decision was that the notified amendments should be classified as new aid, as defined in Article 1(c) Part II of Protocol 3. Furthermore, these amendments could not be classified as alterations severable from the original Scheme. Therefore, the Authority took the view that entire Scheme should be regarded as new aid, which required a new approval before it could be implemented ([10]).

(22) In reference to the non-notified amendments put into effect by the Supplementary Regulation, the Authority's preliminary view was that these have adversely affected the incentive effect requirement set out in the original Scheme, by widening the scope of the Scheme beyond what was approved by the Authority's Decision No 390/10/COL. It appeared, in particular, that the Supplementary Regulation allowed for aid to be granted to projects which had already started before the Scheme entered into force.

(23) The Authority thus took the preliminary view that the non-notified amendments to the Scheme would have an effect on the assessment which the Authority made of the Scheme when it originally approved it. In particular, the amendments would alter the Authority's assessment of the incentive effect, which is a central element in assessing the compatibility of regional aid with Article 61(3)(c) of the EEA Agreement. As a result, the Authority took the preliminary view that the entire Scheme, as amended by the Supplementary Regulation, should constitute new aid according to Protocol 3, Article 1 Part II ([11]).

(24) In order to review the application of the incentive effect, the Authority in the Opening Decision examined the way in which the Scheme has been applied since it came into force in 2010 ([12]). In this context, the Icelandic authorities provided the Authority with details of the investment agreements into which it entered, in the Icelandic authorities' view, on the basis of the Scheme.

(25) In respect of the application of the Scheme, after examining the investment agreements the Authority expressed doubts as to whether the application of the Scheme was consistent with the Scheme as approved. It stated that it had particular doubts as to whether the provisions and mechanisms under the Scheme were sufficiently clear to ensure that the aid is sufficiently limited and proportionate to ensuring that it meets the regional aid objectives, and that it does not instead constitute a form of operating aid ([13]).

(26) The Authority further expressed doubts as to the compatibility with EEA law of the Supplementary Regulation, in that the latter appeared to allow for a retroactive application of the Scheme as regards the corporate tax rate, as well as for a maximum duration of the tax exemptions covering also agreements concluded prior to the entry into force of the Scheme ([14]).

([10]) See recitals 42 to 46.
([11]) See recital 50.
([12]) See Section 4.2.1.
([13]) See recitals 59 to 70.
([14]) See recitals 72 to 83.

(27) The Authority therefore expressed doubts as to whether or not the Scheme, as applied, and as amended by the Supplementary Regulation and by Act No 25/2013, could be considered to be compatible with the functioning of the EEA Agreement ([15]).

(28) Finally, concerning the investment agreements, the Authority expressed doubts as to whether or not aid under these agreements has been granted within the scope of the Scheme, and whether or not such aid could be considered to be compatible with the functioning of the EEA Agreement ([16]).

5. COMMENTS RECEIVED BY THE AUTHORITY

(29) By a letter dated 8 July 2013, the Icelandic authorities submitted comments on the Authority's Opening Decision. The Icelandic authorities also submitted copies of:

(a) an investment agreement between the Icelandic State and Becromal, dated 7 July 2009;

(b) an investment agreement between the Icelandic State and Kísilfélagið, dated 29 May 2009;

(c) an investment agreement between the Icelandic State and Verne, dated 29 May 2009;

(d) a news clip from Ríkisútvarpið (the Icelandic National Broadcaster), dated 4 May 2012, concerning the status of the Kísilfélagið project.

(30) On 3 October 2013, the Authority received comments from Becromal. Becromal also submitted a letter from the Minister of Industry who was in office from 24 May 2007 until 10 May 2009, copies of e-mail correspondence with officials at the Ministry of Industry and a business plan from 2007. Moreover, at Becromal's request, a meeting was held in Brussels on 29 April 2014 to discuss the case and the Authority's preliminary findings.

(31) The Authority did not receive comments from the other alleged beneficiaries (i.e. Verne, Marmeti, Íslenska Kísilfélagið, Endurvinnslan and Thorsil).

5.1. *Comments by the Icelandic authorities*

(32) The Icelandic authorities have commented on the Supplementary Regulation and the individual investment agreements.

(33) The Icelandic authorities have expressed their regret that none of the investment agreements included a reference to the net present value of the aid granted, and that only two out of the six investment agreements (the Becromal Investment Agreement and the Verne Investment Agreement) refer to the investment cost of the respective projects, as required by the Scheme as approved. The Icelandic authorities have committed to duly amend the agreements and to insert the relevant information.

(34) Moreover, the Icelandic authorities have stated that they respect the Authority's preliminary view that certain provisions in the Kísilfélagið, Thorsil and GMR Endurvinnslan Investment Agreements, which provide for further incentives than are provided for in Act No 99/2010, and for the possibility of an extension of the aid period beyond the initial ten or 13 years, are not consistent with the Scheme as approved. The Icelandic authorities have accordingly committed to amend the investment agreements in question and to delete these provisions (see Section II.5 below).

5.1.1. **The Supplementary Regulation**

(35) As regards the Authority's assessment in the Opening Decision of the non-notified amendments to the Scheme, put into effect by the Supplementary Regulation, the Icelandic authorities have made a number of comments and submissions.

([15]) See recital 85.
([16]) See recitals 160 to 163.

(36) The Icelandic authorities have submitted that the reference to 'a special investment agreement' (added to Articles 3, 8 and 20 of the Incentives Regulation by the Supplementary Regulation), only relates to the preparation of an investment project, which in any case had to fulfil the incentive effect criteria of the Incentives Regulation, as amended by the Supplementary Regulation.

(37) The Authority had stated in its Opening Decision that Becromal, Kísilfélagið and Verne appeared to have agreements signed before the entry into force of the Scheme.

(38) In this respect, the Icelandic authorities have asserted that the amendments introduced to the Scheme by the Supplementary Regulation relate only to one special investment agreement: an agreement made with Becromal prior to the conclusion of the Becromal Investment Agreement on 30 December 2010. The Icelandic authorities have submitted that the amendments had no other purpose or effect than to accommodate the Becromal project. Moreover, they have stated that no other special investment agreement has been signed, or would be signed, pursuant to the amendments brought in by the Supplementary Regulation.

(39) The Icelandic authorities have accordingly submitted that the Supplementary Regulation has no effect on the Kísilfélagið Investment Agreement. They have stated that the relevant provisions of the Kísilfélagið Investment Agreement differ from an investment agreement concluded between Iceland and Kísilfélagið on 29 May 2009, which related to exemptions from the Rules on Foreign Exchange. Accordingly, the Icelandic authorities have taken the view that the earlier agreement cannot be considered to be a 'special investment agreement' within the meaning of the Supplementary Regulation. The Icelandic authorities have added in this respect that work had not, at the time of writing, yet started on the project which the Kísilfélagið Investment Agreement was intended to support.

(40) Similarly, the Icelandic authorities have submitted that the Supplementary Regulation does not have any effect on the Verne Investment Agreement, on the basis that there was no previous signed investment agreement with Verne. According to the Icelandic authorities, a draft investment agreement was initialled (but not signed) on 23 October 2009. Therefore, the Icelandic authorities have contended that there was no previous signed investment agreement with Verne that could constitute a 'special investment agreement' within the meaning of the Supplementary Regulation.

5.1.2. **The investment agreements**

(41) In its Opening Decision the Authority expressed doubts concerning whether the Verne and Becromal Investment Agreements had complied with the requirements of the Scheme, since work on the two projects appeared to have started prior to the entry into force of the Scheme in 2010. Moreover, the Authority expressed doubts concerning whether the necessary incentive effect criteria were fulfilled with regard to the Kísilfélagið Investment Agreement. However, the Authority also noted that it did not at the time have sufficient information concerning the status of that project.

(42) The Icelandic authorities have stated, in response, that:

— The Becromal project started construction work following the investment agreement concluded on 29 May 2009, prior to the Becromal Investment Agreement (concluded 30 December 2010).

— The Kísilfélagið project had not begun at the time at which the Icelandic authorities sent their comments to the Authority. The agreement that was signed on 29 May 2009 relates to an exemption from currency restrictions and has no bearing on the application of the incentive effect.

— There is also no link between the Verne Investment Agreement of 27 September 2011 and the draft agreement of 23 October 2009, which was notified to the Authority but was later withdrawn.

(43) Furthermore, the Icelandic authorities have maintained that all the investment agreements, with the exception of the Becromal Investment Agreement, fall within the scope of the Scheme as approved (rather than as amended

by the Supplementary Regulation), as regards the provisions of Article 8 of the Incentives Regulation (concerning aid relating to taxes and other fees). To this end, they have submitted that the amendments introduced by the Supplementary Regulation, which allow for an application of the corporate tax rate applicable before the start of the Scheme, were adopted only for the purpose of covering the special investment agreement with Becromal.

(44) According to the Icelandic authorities all the projects were subject to review by the Incentive Committee, which includes representatives appointed by the Ministry of Finance and the Ministry of Industry and Innovation. The Committee evaluated whether each of the projects met the criteria on eligibility laid down in Act 99/2010 and the Incentives Regulation. Moreover, according to the Icelandic authorities the Invest in Iceland Agency performed a cost-benefit analysis for each project prior to the conclusion of any agreement ([17]).

(45) The Icelandic authorities held that although the Kísilfélagið, Thorsil, GMR Endurvinnslan and Marmeti Investment Agreements do not explicitly refer to the investment cost of the respective projects and lack a statement as to the overall aid intensities or the aid ceiling, they are nevertheless subject to strict monitoring obligations to ensure proper use of the incentives provided in the agreements. The agreements also stipulate that: if it is revealed that the incentives provided for in this Agreement have exceeded the levels permitted in Act No 99/2010, or the Agreement, the excess amount shall be reclaimed from the Company and the further granting of incentives shall be discontinued ([18]). Therefore, according to the Icelandic authorities, the aid granted on the basis of those agreements could never have exceeded what was allowed for under the Scheme.

(46) Concerning the Becromal Investment Agreement, the Icelandic authorities' view is that Becromal did not take any binding decisions regarding the investment concerned before the entry into force of the Scheme. Moreover, Becromal has so far not taken any decision regarding the investment towards […]. If Becromal were to decide to move forward with its investment in […], based on an independent assessment and a separate decision by the company, the Icelandic authorities consider that this investment would be eligible for support under the Scheme, provided all necessary conditions are satisfied.

(47) As far as the Verne Investment Agreement is concerned, the Icelandic authorities have expressed the view that Verne had an incentive to bring the project mentioned therein under the Scheme, given its decision to withdraw from its original data centre project and stop all construction on the site due to the financial crisis.

(48) Moreover, the Icelandic authorities have argued that the Verne Investment Agreement concerns a new project, unrelated to the original project (which became completely obsolete as of December 2009). They submit that this new agreement displays different contractual characteristics:

(a) the parties are different;

(b) new capital has been injected into the new entity established to benefit from the Scheme;

(c) the potential level of investment is lower;

(d) it concerns the new build-out of data centre space and infrastructure;

(e) the parties are not exempted from legal obligations such as restrictions on capital controls, industrial charges, street connections fees etc.; and

(f) it imposes additional obligations as regards the transfer of shares.

(49) The Icelandic authorities have also argued that the Verne Investment Agreement from 27 September 2011 is narrower in scope than the 2009 agreement as regards the State aid benefits it provides. For example, the income tax payable is fixed at a rate of 20 %, rather than 15 %, as was the case under the 2009 agreement. Moreover, the duration is 13 (rather than 20) years, and the supervisory powers of the Icelandic authorities are extended.

([17]) Invest in Iceland is a government agency that provides information for foreign investors on investment opportunities in Iceland and the business environment. Invest in Iceland also collects data on the business environment in Iceland, organises site visits and meetings with potential investors, lobbies for improved conditions for foreign investors and influences the legislative body. Invest in Iceland was founded by Act No 38/2010, the Promote Iceland Act. More information is available online at: http://www.invest.is/

([18]) See Article 22.5 of the Kísilfélagið Investment Agreement, Article 21.5 of the Thorsil Investment Agreement, Article 22.5 of the GMR Endurvinnslan Investment Agreement and Article 20.5 of the Marmeti Investment Agreement.

(50) The Icelandic authorities accordingly have taken the view that the Verne Investment Agreement is in full compliance with the terms of the Scheme.

5.1.3. **The notified amendments**

(51) Concerning the notified amendments to the Scheme following the adoption of Act No 25/2013, the Icelandic authorities are of the view that these should not be regarded as being part of the Scheme until the Authority has approved them. However, since the Authority did not approve the notified amendments before the expiry of the Scheme as a whole, they did not enter into force.

5.1.4. **Suggested measures**

(52) With regard to the Supplementary Regulation, the Icelandic authorities had expressed their willingness to have it withdrawn and annulled with immediate effect.

(53) The Icelandic authorities have suggested the following:

(a) the figures in the cost-benefit analysis calculations, performed by the Invest in Iceland Agency, will be inserted into the investment agreements, as well as in any future agreements;

(b) the investment agreements, as well as any future agreements, will be amended to provide a reference to the overall ceiling of the eligible investment costs;

(c) the provision in the Kísilfélagið, Verne, GMR Endurvinnslan and Marmeti Investment Agreements, that the beneficiaries have '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 right to have their investment agreements amended and being provided with 'new incentives, which shall enter into force from the date of signature of the amended Agreement', will be deleted;

(d) the clause inserted in the Becromal and Thorsil Investment Agreements that allows the possibility of an extension of the aid period beyond the maximum duration provided for in the Scheme will be deleted.

5.2. ***Comments by Becromal***

(54) Becromal has argued that its investment agreement complies with the compatibility principles of regional aid under Article 61(3)(c) of the EEA Agreement, as well as with the provisions of the Authority's Guidelines on Criteria for an In-depth Assessment of Regional Aid to Large Investment Projects (the 'LIP Guidelines') ([19]). Moreover, it submits that the investment incentives granted to Becromal are consistent with the incentives provided for in the Scheme.

(55) In particular, Becromal has stated that the aid measures have positive effects: an increase of economic growth, job creation (direct and indirect jobs), an increase of training needs for the acquisition of specific skills, and clustering effects.

(56) Becromal also considers that State aid was the appropriate instrument to create a stable economic environment in Iceland and boost foreign investments.

(57) As regards the notion of incentive effect, Becromal disagrees with the Authority's reference in the Opening Decision to the *Kronoply* judgment, on the basis of which the Authority argued that it may base its assessment of the incentive effect by reference to a circumstance of a chronological nature ([20]). This case, it argues, concerned the interpretation of the previous Regional Aid Guidelines of 1998 and since then, the examination of State aid

([19]) 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

([20]) Case T-162/06 *Kronoply* [2009] ECR II-1, paragraph 101.

cases has changed with the introduction of more refined economic analysis ([21]). Therefore, when assessing the incentive effect of the aid, the Authority must also assess the economic nature of the aid (i.e. whether it has contributed to a change in the behaviour of the aid beneficiary) ([22]).

(58) Moreover, Becromal maintains that the purchase of land and/or the building of a plant does not necessarily mark the beginning of an investment decision, since such an investment can easily be sold at any given time. Instead, the ordering of equipment specially designed for a specific type of plant should constitute the 'start of work' within the meaning of the RAG. According to Becromal, the construction work on the plant started in 2008, after a formal offer had been made by the Icelandic authorities to conclude an investment agreement. However, in Becromal's view specialised equipment was not ordered until 2009, when negotiations for the pre-investment agreement had already started.

(59) Further, an investment of around EUR 76 million in Phase I of the Becromal project has already taken place ([23]) […].

(60) Becromal has also submitted a letter dated 20 September 2013, from the former Minister of Industry, in which the latter confirms that the Government agreed to conclude an investment agreement with the company in 2007 and that work on the agreement had started in 2008. While an investment agreement was being drafted, it was decided, as an interim measure until the full agreement was finalised, to sign a lighter form of investment agreement with Becromal providing the company with exemptions from the capital controls.

(61) According to Becromal, its request to enter into a complete investment agreement in 2009 was rejected. In its view, the Icelandic authorities refused to enter into an investment agreement with the company until an investment incentive scheme had been established. Moreover, according to Becromal a pre-investment agreement was signed in 2009 in order to provide Becromal with an exemption from capital controls. The complete investment agreement was not signed until 2010, as a consequence of the development of an investment incentives scheme and the economic crisis.

(62) Furthermore, Becromal has argued that the full benefits of the incentives under the agreement have not yet been realised. According to the information provided, no training aid has been granted so far by the Icelandic authorities, whereas the aid received so far under the Becromal Investment Agreement amounts to:

20 % reduction in social security charges	EUR […]
Exemption from excise duties	EUR […]
Reduction of stamp duties	EUR […]
Total	**EUR […]**

(63) Becromal has further submitted that the aid measures do not have an effect on trade within the EEA, as the market for anode foils used in aluminium electrolytic capacitors is global, and the largest competitors are companies from […].

II. **ASSESSMENT**

1. SCOPE OF THE ASSESSMENT

(64) In the light of information received during the formal investigation procedure, the Authority considers it appropriate to limit the scope of its assessment.

([21]) Joined cases C-630/11 P to 633/11 P *HGA Srl* ECLI:EU:C:2013:387.
([22]) As quoted in Becromal's submission: 'Thus purchase of land and/or building of plant do not necessarily mark the beginning of an investment decision. Such an investment can easily be sold at any given time. Ordering of equipment specially designed for a specific type of plant however constitutes start of work' (page 10).
([23]) For a further description of the Becromal project see Section II.4 below.

1.1. ***Expiry of the Scheme***

(65) The Scheme, as approved by Decision No 390/10/COL, expired on 31 December 2013.

(66) The notified amendments to the Scheme (set out in Act No 25/2013), did not enter into effect, as they were not approved by the Authority before the expiry of the Scheme itself. Therefore, it follows that the notified amendments have not benefited any of the companies that had already signed an investment agreement with the Icelandic authorities.

(67) The expiry of the Scheme means that no further investment agreements will be concluded under it.

(68) The Authority therefore considers that a formal investigation of the Scheme, initiated under Article 1 of the Opening Decision, is no longer required. Accordingly, the Authority closes the investigation as regards the Scheme itself, except insofar as regards the amendments brought about by the Supplementary Regulation.

(69) As regards the amendments brought about by the Supplementary Regulation (concerning the application of the incentive effect under the Scheme, the maximum corporate tax applicable, and the date for calculating the maximum duration of the tax exemptions allowed under the Scheme), the Authority will assess (i) whether these amendments constitute State aid and if so, (ii) the existing aid nature of the measures.

1.2. ***The Marmeti Investment Agreement***

(70) The Marmeti Investment Agreement concerned the construction and operation of a fish processing factory in Sandgerði. Marmeti's operations involved the salting and drying of seafood. Marmeti was founded in 2012 and began its operation in February 2013. The company was operational for 8 months and on 18 February 2014 Marmeti was declared bankrupt.

(71) For the State aid provisions in Articles 61 to 63 of the EEA Agreement to apply, the aid must be granted to undertakings involved in the production of goods which fall within the product coverage of the EEA Agreement. Article 8(3) of the EEA Agreement reads as follows:

> 'Unless otherwise specified, the provisions of this Agreement shall apply only to:
>
> (a) products falling within Chapters 25 to 97 of the Harmonized Commodity Description and Coding System, excluding the products listed in Protocol 2;
>
> (b) products specified in Protocol 3, subject to the specific arrangements set out in that Protocol.'

(72) Article 8(3) of the EEA Agreement therefore limits the material scope of application of the EEA Agreement to the above products, unless otherwise specified in the EEA Agreement. Fish and fishery products, insofar as they do not fall under Chapters 25 to 97 of the Harmonized Commodity Description and Coding System (HS) or are specified in Protocol 3, fall outside the general scope of application of the EEA Agreement. Although Article 4 of Protocol 9 to the EEA Agreement provides that any aid '[…] granted through State resources to the fisheries sector which distorts competition shall be abolished', the competence to assess State aid to the fisheries sector rests with the Contracting Parties to the EEA Agreement ([24]).

(73) It is the Authority's understanding that the products produced by Marmeti fell under Chapters 03, 05, 15, 16 and 23 of the Harmonized Commodity Description and Coding System (HS) and were thus outside the product coverage of the EEA Agreement. The Authority does therefore not have competence to assess potential aid granted under the Marmeti Investment Agreement.

(74) In light of the above, the Authority closes its investigation into the Marmeti Investment Agreement.

([24]) For further analysis of the product scope of the EEA Agreement and the competence of the Authority in the field of State aid, see EFTA Surveillance Authority Decision 176/05/COL regarding alleged State aid to the fisheries sector, available online at: http://www.eftasurv.int/?1=1&showLinkID=10276&1=1

1.3. ***Conclusion***

(75) In view of the above, the Authority will confine its assessment to the amendments of the Scheme, brought about by the Supplementary Regulation, and the effect that those amendments had on the investment agreements signed with Becromal, Kísilfélagið, Verne, Thorsil and GMR Endurvinnslan (the 'five Investment Agreements').

2. THE PRESENCE OF STATE AID

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

(76) 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'.

(77) 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 for (i) the Scheme as amended by the Supplementary Regulation and (ii) the five Investment Agreements.

2.2. *Presence of state resources*

(78) 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 ([25]). 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 ([26]). 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.

2.2.1. **The Scheme as amended by the Supplementary Regulation**

(79) The Authority concluded in Decision No 390/10/COL that the Scheme constituted a transfer of State resources. The amendments brought about by the Supplementary Regulation do not alter that conclusion.

2.2.2. **The five Investment Agreements**

(80) In particular, the five Investment Agreements included the following derogations from taxes and charges:

(a) the maximum payable corporate income tax rate for the company investing in the relevant project was fixed at the rate applicable at the time of signing of an agreement between the company and the Ministry of Industry;

(b) derogations were granted from the rules on depreciation:

(i) depreciation of assets to no residual value, in lieu of the statutory 10 % income tax provided for in Act No 90/2003; and

(ii) the beneficiary can, in the year when the assets are brought into operation, choose to depreciate such assets with a proportional factor of the annual depreciation, instead of a full year's depreciation, as required by Article 34 of Act 90/2003;

([25]) Case 248/84 *Germany* v *Commission* [1987] ECR 4013, paragraph 17.
([26]) See paragraph 3 of the Authority's Business Taxation Guidelines.

(c) exemptions were granted from the industrial charges set out in Act No 134/1992 and from the market charges set out in Act No 160/2002;

(d) stamp duty on documents relating to the investment was fixed at 0,15 % in lieu of the statutory stamp duty provided for in Act 36/1978;

(e) exemptions were granted from the electricity safety control fee set out in Arts 14(1)(1), 14(1)(4) and 14(1)(5) of Act No 146/1996;

(f) the municipal property tax rate was set at 30 % less than the maximum rate stipulated in Chapter II of Act No 4/1995;

(g) the general social security charge was set at 20 % less than that which was stipulated in Article 2(3) of Act No 113/1990;

(h) exemptions were granted from customs duties pursuant to Act No 88/2005 and from excise duties pursuant to Act No 97/1987.

(81) Furthermore, the Preamble to the Kísilfélagið Investment Agreement refers to an agreement between Kísilfélagið, the Municipality of Reykjanesbær and the Harbour Fund Company on Licensing and Charges relating to the Project, including principles on property tax and land lease ([27]). The lease of land or property below market price involves a loss of revenue and is therefore a transfer of state resources.

(82) In view of the above, the Authority concludes that state resources are likewise involved in the five Investment Agreements.

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

2.3.1. **The Scheme as amended by the Supplementary Regulation**

(83) The Authority concluded in Decision No 390/10/COL that the Scheme was selective, in that only undertakings investing in certain regions in Iceland for assistance under Article 61(3)(c) of the EEA Agreement could receive aid thereunder. The Authority likewise concluded that the Scheme would allow beneficiaries to be relieved of part of the costs which they would normally have had to bear themselves in their course of business. These costs included the payment of the applicable corporate income tax rate at any given time, the standard municipal property tax and the generally applicable social security charge.

(84) The Authority accepts the argument of the Icelandic authorities that the amendments to the Scheme brought about by the Supplementary Regulation extend the advantages granted under the Scheme to Becromal. The amendments brought about by the Supplementary Regulation therefore constitute a selective measure, as they concern one particular company.

(85) The Authority accordingly concludes that the Supplementary Regulation favours certain undertakings and the production of certain goods within the meaning of Article 61(1) of the EEA Agreement

2.3.2. **The five Investment Agreements**

(86) Similarly, the beneficiaries of the five Investment Agreements are individual companies and therefore the measures are selective.

(87) The definition of aid is broader 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

([27]) Sale and lease of land by the State below market value was one of the aid measures the Scheme provided for, see Section I.2.5.2.6 and Section I.2.5.3 of Decision No 390/10/COL.

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 ([28]). 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 ([29]).

(88) The five Investment Agreements allowed the beneficiaries to be relieved of part of the costs which they would normally have had to bear themselves in their course of business, such as paying the applicable corporate income tax rate at any given time, the standard municipal property tax and the generally applicable social security charge.

(89) The Authority therefore concludes that the five Investment Agreements favour certain undertakings and the production of certain goods within the meaning of Article 61(1) of the EEA Agreement.

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

(90) According to settled case-law, for the purpose of categorising a national measure as State aid, it is not necessary to demonstrate that the aid has a real effect on trade between the Contracting Parties and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and distort competition ([30]).

(91) Furthermore, when aid granted by an EFTA State strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade, the latter must be regarded as influenced by that aid ([31]).

2.4.1. **The Scheme as amended by the Supplementary Regulation**

(92) The Authority concluded in Decision 390/10/COL that the Scheme strengthened the competitive situation of the supported undertakings in the eligible regions, compared to their actual or potential competitors in the EEA. The amendments brought about by the Supplementary Regulation do not alter that conclusion.

2.4.2. **The five Investment Agreements**

(93) The Becromal Investment Agreement strengthens Becromal's competitive situation with respect to other producers of anodized aluminium foils for electrolytic capacitors. As has been confirmed by Becromal, the market for anode foils used in aluminium electrolytic capacitors is a global one and among Becromal's customers are companies in […] and […]. Thus, the fact that Becromal's largest competitors are companies from […] does not mean that there is no effect on trade within the EEA.

(94) The Verne Investment Agreement strengthens Verne's competitive situation with respect to other data centres established in Iceland. Moreover, Verne operates a global wholesale data centre where the service will be available to customers within the EEA and the world market.

(95) The Kísilfélagið Investment Agreement strengthens Kísilfélagið's competitive situation with respect to other producers of metallurgical grade silicon and Silica dust. The market for metallurgical grade silicon and Silica dust is global.

(96) The Thorsil Investment Agreement strengthens Thorsil's competitive situation with respect to other producers of silicon metal. As noted in the Preamble of the Thorsil Investment Agreement, the project was, inter alia, initiated to meet increased demand for silicon metal in Europe and North America.

([28]) 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.

([29]) 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.

([30]) *Cassa di Risparmio di Firenze*, paragraph 140.

([31]) Ibid, paragraph 141.

(97) The GMR Endurvinnslan Investment Agreement strengthens GMR Endurvinnslan's competitive situation with respect to other steel recycling companies and steel producers. The company intends to export the majority of its products to purchasers in the construction industry ([32]).

(98) Accordingly, the Authority concludes that the five Investment Agreements strengthen the competitive situation of the supported undertakings in the eligible regions compared to their actual or potential competitors in the EEA.

2.5. ***Conclusion***

(99) Based on the above, the Authority concludes that the amendments brought about by the Supplementary Regulation and the five Investment Agreements constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

3. THE SUPPLEMENTARY REGULATION'S AMENDMENTS — A NEW AID MEASURE

3.1. ***Substantial alteration of the Scheme***

(100) In its Opening Decision, the Authority expressed doubts as to whether or not aid under the Investment Agreements had been granted within the scope of the Scheme, since the agreements appeared *prima facie* to have been affected by amendments to the Scheme brought about by the Supplementary Regulation.

(101) Under Article 1(c) Part II of Protocol 3 'alterations to existing aid' are to be regarded as new aid. According to Article 4(1) of the Authority's Decision No 195/04/COL on the implementing provisions under Article 27 in Part II of Protocol 3 (the 'Implementing Decision'), '[…] an alteration to existing aid is any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market'. Therefore, alterations which do not concern the substance of the aid do not affect how the measure is to be classified.

(102) The amendments made by the Supplementary Regulation allow aid to be granted to projects upon which work has started before a grant of aid is made — indeed, before the Scheme even entered into force.

(103) The amendments brought about by the Supplementary Regulation alter the basic features of the Scheme. In particular the Scheme's requirement for an incentive effect has been removed. This requirement was a substantial part of the compatibility assessment of aid measures granted under the Scheme as originally approved (as described in Decision No 390/10/COL).

(104) Accordingly, the Authority takes the view that the amendments to the Scheme made by the Supplementary Regulation constitute a substantial alteration of the Scheme as approved.

(105) Considering that, under Article 1(c) Part II of Protocol 3, alterations to existing aid are to be regarded as new aid, the question arises as to whether it is the altered existing aid that must be classified as new aid, or only the alterations as such. In its ruling in the *Gibraltar* case the Court of First Instance stated that:

> '[…] It is only where the alteration affects the actual substance of the original scheme that the latter is transformed into a new aid measure. There can be no question of such a substantive alteration where the new element is clearly severable from the initial scheme.' ([33]).

(106) Consequently, the Authority must assess whether the alterations brought about by the Supplementary Regulation are severable from the initial Scheme. If that is the case, the alterations constitute as such new aid and must therefore be assessed in light of Article 61(3)(c) and the Authority's Guidelines on regional aid for 2007-2013 ('the 2007 RAG') ([34]).

([32]) See http://www.mbl.is/vidskipti/frettir/2012/03/31/ny_verksmidja_opnud_i_byrjun_naesta_ars/

([33]) Joined Cases T-195/01 and T-207/01 *Government of Gibraltar* v *Commission* [2002] ECR II-2309, paragraph 109.

([34]) Available at: http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/

3.2. ***Alterations severable from the Scheme***

(107) According to established case-law, an alteration of an existing aid scheme that extends it to a new category of beneficiaries is clearly severable from the initial scheme, since the application of the existing aid scheme to the new category of beneficiaries does not affect the assessment of the compatibility of the initial scheme ([35]).

(108) The amended wording of Article 3(c) of the Incentives Regulation states that aid may be granted also to a project which has started after a special investment agreement was concluded and prior to the entry into force of the Supplementary Regulation. This amendment widened the scope of the Scheme beyond that which was approved by the Authority's Decision No 390/10/COL, in that it allowed for aid to be granted to projects upon which work had started before the Scheme entered into force, and which therefore would not have met the test for incentive effect set out in the Scheme as approved. The Supplementary Regulation therefore opened the Scheme up for a new category of beneficiaries. Moreover, the Authority considers that the amendments made by the Supplementary Regulation to Articles 8 and 20 of the Incentives Regulation, i.e. the reduction of the reference rate for corporate income tax and the extension of the maximum duration of the tax exemptions, have been introduced only for the purposes of benefiting this new category of beneficiaries. These new beneficiaries can therefore receive more aid than what was allowed for under the Scheme as approved. Therefore, the amendments to the Scheme are fundamentally interlinked. However, these amendments do not affect the compatibility of individual measures already covered under the Scheme as approved.

(109) The Authority therefore considers the amendments brought about by the Supplementary Regulation to be an alteration that is clearly severable from the initial Scheme. Accordingly, the Authority takes the view that these amendments to the Scheme constitute a new aid measure. Moreover, it follows that any aid granted on the basis of the Supplementary Regulation will likewise be considered as new aid.

3.3. ***Compatibility of the new aid measure***

(110) The Authority accordingly turns to assess the compatibility of the amendments to the Scheme brought about by the Supplementary Regulation.

(111) In its Decision No 390/10/COL approving the Scheme, the Authority stated 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' ([36]).

(112) 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' ([37]).

(113) The requirements and method for verifying the existence of an incentive effect of aid, as prescribed by the 2007 RAG, were a precondition for the Authority's approval of the Scheme. However, the Supplementary Regulation's insertion of the new text 'or according to a special investment agreement prior to entry into force of the Act' into Article 3 of the Incentives Regulation allows for aid to be granted to projects which were started before the Scheme entered into force.

(114) Furthermore, the amendment which the Supplementary Regulation made to Article 8 of the Incentives Regulation alters the reference rate for corporate income tax which can be guaranteed to a beneficiary as a

([35]) See Case T-189/03 *ASM Brescia* v *Commission* [2009] ECR II-1831, paragraph 106 and Case T-151/11 *Telefónica de España and Telefónica Móviles España* v *Commission* [not yet published], paragraph 64.
([36]) Section I.2.13.
([37]) Section II.3.6.

maximum tax rate. Under the amended version of the article the reference rate in case of a 'special investment agreement' is 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 have been the tax rate at the time at which the investment agreement was signed under the Scheme. The Authority considers that the Supplementary Regulation changes the terms of the aid for any new beneficiaries brought into the scope of the Scheme by the Supplementary Regulation's amendments.

(115) Finally, the amendments made by the Supplementary Regulation to Article 20 of the Incentives Regulation 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. These amendments likewise change the terms of the aid for any new beneficiaries brought into the scope of the Scheme by the amendments introduced by the Supplementary Regulation.

(116) The Authority takes the view that the amendments made by the Supplementary Regulation undermine the incentive effect test requirement set out in Article 5 of Act 99/2010, as approved by the Authority. Moreover, these amendments alter the original Scheme's incentive effect requirement to the point where the incentive effect conditions described in paragraph 30 of the 2007 RAG ([38]) are no longer fulfilled.

(117) Accordingly, the Authority concludes that the amendments made by the Supplementary Regulation to Articles 3, 8 and 20 of the Scheme are new aid which is incompatible with the functioning of the EEA Agreement within the meaning of Article 61(3)(c) thereof, and the 2007 RAG.

(118) It follows that any aid granted on the basis of the amendments effected by the Supplementary Regulation is also incompatible with the functioning of the EEA Agreement pursuant to Article 61(3)(c) and the 2007 RAG.

(119) The Authority now turns to examine the five Investment Agreements in turn.

4. THE BECROMAL INVESTMENT AGREEMENT

4.1. *Effect of the Supplementary Regulation*

(120) The Becromal Investment Agreement refers to an investment in an aluminium foil anodizing plant to be constructed in the town of Akureyri in two phases. The first phase was to be concluded by the end of March 2011 and the second phase is to be concluded by the end of year 2014, for a total investment cost of approximately EUR 117,25 million ([39]).

(121) Sections D, H and I of the Preamble to the Becromal Investment Agreement refer to a previous investment agreement on the same project, into which the same parties entered on 7 July 2009.

(122) As previously noted, the Icelandic authorities have stated that the Supplementary Regulation was adopted for the purposes of extending the Scheme to the Becromal project. In their view, allowing Becromal to apply for incentives under the Scheme was necessary in order for the Icelandic authorities to honour their contractual obligations with Becromal.

(123) The references to a 'special investment agreement prior to entry into force of the Act' were therefore added to the Incentives Regulation by the Supplementing Regulation, in order to accommodate Becromal. Accordingly, Becromal could only have met the incentive test set out in the Scheme by virtue of the amendments introduced by the Supplementary Regulation.

([38]) Paragraph 30 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.'.

([39]) See paragraphs 93 to 95 of the Opening Decision.

(124) The Authority has already concluded that the alterations to the Scheme brought about by the Supplementary Regulation constitute new aid severable from the Scheme. It follows that any aid granted under the Becromal Investment Agreement likewise becomes new aid, because that agreement was concluded under the scope of the Incentives Regulation only as amended by the Supplementary Regulation.

(125) The Authority has already concluded that any aid granted on the basis of the amendments effected by the Supplementary Regulation is new aid which is incompatible with the EEA Agreement. It follows that the Becromal Investment Agreement likewise constitutes incompatible aid, because it does not fulfil the incentive effect test set out in the Scheme as approved, and cannot thus fall within its scope.

(126) For the sake of completeness and in order to address the arguments put forward by Becromal and the Icelandic authorities, the Authority has assessed in the alternative the Becromal Investment Agreement as an *ad hoc* measure. To this end, the Authority refers to the 2007 RAG and in particular to the incentive effect requirement found therein.

4.2. ***Incentive effect***

(127) As noted above, the Becromal Investment Agreement refers to a previous agreement of 7 July 2009. Both agreements form part of the same project which the Authority considers to constitute a 'single investment project' within the meaning of paragraph 49 and footnote 47 of the 2007 RAG.

(128) According to paragraph 30 of the 2007 RAG, the existence of an incentive effect is a necessary precondition for compatibility:

> '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 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'.

(129) In line with the decision-making practices of the European Commission and the Authority, a letter of intent within the meaning of the 2007 RAG can be described as a 'document that may be considered as explicitly granting aid to [the company] for the investment.' ([40]). Moreover, according to paragraph 30 of the 2007 RAG such a letter of intent should be sent to the Authority for approval prior to the granting of the aid.

(130) The aim of paragraph 30 of the 2007 RAG is to make it possible for the Authority to ascertain whether investment aid has a sufficient incentive effect, without carrying out a full analysis of the economic circumstances of the recipient's investment decision, at the time it was made ([41]). If such assurances are not given and work begins, 'the whole project will not be eligible for aid'; i.e. the project as such is not eligible. Thus, as confirmed by the General Court in the Kronoply judgment, the Authority may base its assessment of the incentive effect by reference to a circumstance of a chronological nature ([42]).

([40]) Case C 8/2009 *Fri-El Acerra S.r.l.* (Italy), paragraph 40. See also Commission Decision 2011/110/EU of 15 September 2010 on State aid that Italy plans to grant to Fri-El Acerra Srl (Case C 8/09 (ex N 357/08)) (OJ L 46, 19.2.2011, p. 28) and the Authority's Decision No 418/10/COL to initiate the formal investigation procedure with regard to regional aid concerning the construction of Verne Data Centre, at Section II.3.1.

([41]) See Case T-162/06 Kronoply [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 European Commission, to raise the presumption that an incentive effect exists'.

([42]) *Idem*, paragraph 80. 'It should be observed that that provision [the third subparagraph of point 4.2 of the 1998 Guidelines on National Regional Aid] 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'.

(131) Becromal has argued that the assessment of State aid cases has changed, with the introduction of a more refined economic analysis such that when assessing the incentive effect of the aid, the Authority must also assess its economic nature (i.e. whether it has contributed to a change in the behaviour of the aid beneficiary), taking also into account the provisions of the LIP Guidelines. The Authority cannot accept this argument.

(132) Becromal refers to the judgment of the Court of Justice in *HGA* ([43]) to argue that: '[…] the Court in its review of the judgement of the Court of First Instance rules that the only determined factor as to whether the aid measure had an incentive effect was to look into whether it had changed the behaviour of the investor and disregarded all references that the Court of First Instance had made to the Kronoply case' ([44]).

(133) However, Becromal's understanding of the *HGA* judgment disregards the express finding of the Court of Justice that the finding of the General Court that: '[…] the requirement that the investment project be commenced before the submission of the application for aid is a simple, relevant and suitable criterion enabling the Commission to presume that the planned aid is necessary' was not called into question in the appeal proceedings ([45]).

(134) Moreover, the Grand Chamber of the Court of Justice has ruled in *Nuova Agricast* that: 'A finding that an aid measure is not necessary can arise in particular from the fact that the aid project has already been started, or even completed, by the undertaking concerned prior to the application for aid being submitted to the competent authorities'. The Court further held that: 'In such a case, the aid concerned cannot operate as an incentive' ([46]). The Authority therefore takes the view that in this instance it is appropriate to base its finding of incompatibility on a chronological assessment: namely that: (i) the incentive test set out in the 2007 RAG was not met; and (ii) work started on the project before the conclusion of the Investment Agreement and the grant of the aid.

(135) The Authority also rejects Becromal's argument that the Authority must examine the project in light of the LIP Guidelines and apply the incentive effect test prescribed therein. The Authority notes that for certain large investment projects, the incentive effect test set out in paragraph 30 of the 2007 RAG (based on the chronological requirement that an application has been made and eligibility has been confirmed before work begins) is supplemented by a second test, which is economic in nature (based on an economic analysis that the aid contributes to the changing of the behaviour of the aid beneficiary), provided for in paragraph 57 of the RAG and the LIP Guidelines.

(136) The LIP Guidelines foresee an in-depth assessment for certain large investments projects, i.e. those who have significant effect on trade and may lead to substantive distortions of competition ([47]). The incentive effect analysing in such cases is described in paragraph 19 of the LIP Guidelines; it '[…] will take place at two levels: first, at a general, procedural level, and, second, at a more detailed, economic level'. It follows that, in addition to having the application submitted before work has started on a project, a more detailed economic analysis is also needed for certain large investment projects.

(137) According to paragraph 3 of the LIP Guidelines and paragraph 49 of the 2007 RAG, a large investment project is an initial investment with an eligible expenditure above EUR 50 million. As previously mentioned, the Becromal Investment Agreement refers to EUR 117,25 million as the total investment cost for both phases of the project. However, neither Becromal nor the Icelandic authorities have submitted any information to the Authority concerning the aid intensity or the eligible costs involved in the project. Nor have they provided any information regarding the conditions for the detailed verification obligation set out in the LIP Guidelines, to which paragraph 57(a) and (b) of the 2007 RAG refer (i.e. that the aid beneficiary accounts for more than 25 % of the products concerned on the market concerned, and that the production capacity created by the project is more than 5 % of the market for the product concerned). In the Authority's view there is nothing to indicate that the Becromal project exceeds the thresholds provided for in paragraph 57 of the 2007 Guidelines.

(138) The Authority therefore concludes that the in-depth analysis provided for in the LIP Guidelines does not apply to the Becromal Investment Agreement.

([43]) Joined Cases C-630/11 P to C-633/11 P *HGA srl* v *Commission* ECLI:EU:C:2013:387.
([44]) See letter from Becromal, dated 30 September 2013, page 10.
([45]) *HGA* v *Commission*, paragraphs 106-107.
([46]) Case C-390/06 *Nuova Agricast* [2008] ECR I-2577, paragraph 69.
([47]) Paragraph 6.

(139) Consequently, in view of the case-law and the wording of the 2007 RAG, it suffices to ascertain whether an application of aid has been made by the beneficiary and a written confirmation by the granting authority has been provided conditional upon the Authority's approval of the measure, before work started on the project.

(140) The 2007 RAG defines the term 'start of work' as 'the start of construction work or the first firm commitment to order equipment, excluding preliminary feasibility studies.'

(141) As has been confirmed by the Icelandic authorities and Becromal, the construction work had started on the Becromal project in 2008, even before the signing of the earlier agreement on 7 July 2009.

(142) The Authority cannot accept Becromal's argument that the 'start of work' should be confined to the ordering of equipment specially designed for the given project, and that the purchase of land and/or the building of a plant does not necessarily mark the beginning of an investment decision since such investment could easily be sold at any given time. This narrow interpretation is not consistent with the wording of the 2007 RAG. As noted above, the 2007 RAG clearly defines 'start of work' as either 'the start of construction work or the first firm commitment to order equipment […]'. This interpretation is supported by the case-law of the General Court, according to which even a small level of investment from the beneficiary is enough to produce legal effects, and is thus considered to constitute the first stage of work ([48]).

(143) Moreover, the information available to the Authority shows that Becromal started construction on its plant in early 2008 ([49]), and its recruitment procedure commenced later that year ([50]). During 2008, Becromal entered into agreements with contractors for the necessary equipment ([51]).

(144) These circumstances support the Authority's view that regional aid was not the main motivational factor for Becromal's investment in the town of Akureyri. To the contrary, the work on the project was initiated by Becromal without any request for aid being submitted to the Icelandic authorities, and without any commitment being undertaken by the Icelandic authorities to grant regional aid.

(145) Moreover, according to the Scheme itself: '[o]nly applications for aid received, together with all necessary documents to assess the application, before start of work on the investment project will be considered for receiving regional aid under the scheme' ([52]). Since work had already started on the Becromal investment project prior to the submission of an application for aid, the Authority concludes that the project did not meet the incentive test and was therefore not eligible to receive regional aid under the Scheme as approved.

(146) The Authority has received no information enabling it to verify whether the Icelandic authorities had committed to grant aid to the project before the start of work. Becromal has stated that it received a formal request from the Icelandic authorities, inviting it to conclude an investment agreement before construction work started on the site. However, neither Becromal nor the Icelandic authorities have submitted any evidence of such a request to the Authority.

(147) As noted above in recital 141, the Icelandic authorities first entered into an investment agreement with Becromal on 7 July 2009. This agreement provided Becromal with assurances that the Icelandic authorities were committed to enter into a complete investment agreement with the company. Although Becromal has submitted to the Authority a letter dated 20 September 2013, from the former Minister of Industry, in which the latter states that the Government agreed to conclude an investment agreement with the company in 2007 and that work on the agreement had started in 2008, this statement is not supported by any contemporary documents, which could demonstrate that specific incentives were given to Becromal prior to the start of work on the project. In any event, the Authority had not provided its approval of the measure before work started on the project.

(148) Therefore, in the present case, neither the Icelandic authorities nor Becromal have demonstrated that circumstances exist which (despite work having started on the project before the grant of the aid) are capable of ensuring that the test for an incentive effect is nonetheless met ([53]).

([48]) Case T-551/10 *Fri-El Acerra* v *Commission* ECLI:EU:T:2013:430, paragraph 67.
([49]) See, for example: http://www.loftorka.is/frettirloftorku/nr/74674/ and http://vikudagur.is/vikudagur/nordlenskar-frettir/2008/01/11/nytt-hus-fyrir-aflthynnuverksmidju-krossanesi
([50]) See http://www.capacent.is/frettir/nr/612
([51]) See for example http://www.rafeyri.is/en/news/167-substation-for-becromal
([52]) Decision No 390/10/COL, Section I.2.13.
([53]) Case T-394/08 *Regione autonoma della Sardegna and Others* v *Commission* [2011] ECR II-6255, paragraph 226.

(149) The Authority accordingly concludes that the incentive effect condition is not satisfied as regards the Becromal Investment Agreement.

4.3. *Conclusion*

(150) On the basis of the above, the Authority concludes that any aid granted under the Becromal Investment Agreement is incompatible with the functioning of the EEA Agreement pursuant to Article 61(3)(c).

5. THE OTHER FOUR INVESTMENT AGREEMENTS — AD HOC MEASURES

5.1. *The Verne Investment Agreement*

5.1.1. **Effect of the Supplementary Regulation's amendments**

(151) The Icelandic authorities have stated that the amendments to the Scheme brought in by the Supplementary Regulation have no bearing on the Verne Investment Agreement. They make this argument on the basis that the Verne Investment Agreement falls within the scope of the Scheme as approved. While the Authority accepts the first argument of the Icelandic authorities in this regard, it cannot accept that the Verne Investment Agreement meets the incentive test set out in the Scheme as approved.

(152) In the Opening Decision, the Authority took note of the fact that although the Verne Investment Agreement does not refer to a previous agreement, it nonetheless appears to concern the same or a similar investment project as that which was the subject of a previous decision adopted by the Authority: Decision No 418/10/COL ([54]).

(153) The initial investment project started on 26 February 2008 with the signing of a real estate purchase agreement, whereby Verne bought five buildings from the Icelandic State for the purposes of establishing its data centre. An investment agreement was initialled on 23 October 2009 ([55]). The project was later put on hold and reintroduced with the signing of the Verne Investment Agreement on 27 September 2011, in order, according to the Icelandic authorities, to be covered under the Scheme as approved.

(154) The project, as originally planned, concerned the construction of a high power density wholesale data centre in the municipality of Reykjanesbær. Under the Verne Investment Agreement, the location of the project has not changed. The same buildings are to be used for the completion of the project, as clearly indicated in the preamble of both the 2009 investment agreement and the Verne Investment Agreement ([56]). Moreover, the main parties to the agreement (i.e. Verne Real Estate II ehf. ('VRE II') and Verne Holdings Ltd) are the same. Further, both investment agreements have a clearly identified common aim: to provide mission-critical data centre services to the global information technology market.

(155) In view of the above the Authority cannot accept the argument of the Icelandic authorities that there are material differences between the two projects. The Icelandic authorities have not supplied the Authority with convincing information to this effect. Moreover, the Authority cannot accept the contention of the Icelandic authorities that, as the Verne Investment Agreement relates only to new build-out of data space and infrastructure, it should concern a new project.

([54]) By Decision No 418/10/COL of 3 November 2010, the Authority opened a formal investigation procedure on an investment agreement, 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. The notification was later withdrawn. Available at http://www.eftasurv.int/media/decisions/418-10-COL.pdf. See also paragraphs 131-139 of the Opening Decision.

([55]) This investment agreement was not formally concluded and its entry into force was conditional upon the Parliament's authorisation, the approval of the boards of Directors of Verne and the Authority's positive decision.

([56]) The preamble of both agreements states that: 'WHEREAS the Investors and Verne have been taking the necessary preliminary steps towards the establishment of a data centre complex in Iceland comprised of four individual buildings, housing, electrical, mechanical and IT equipment, and additional administrative and electrical support buildings that will serve mostly non International clients (hereinafter referred to as the "Data Centre") […]'.

(156) According to the 2007 RAG: '[…] In order to prevent that a large investment project be artificially divided into sub-projects in order to escape the provisions of these guidelines, a large investment project will be considered to be a single investment project when the initial investment is undertaken in a period of three years by one or more companies and consists of fixed assets combined in an economically indivisible way' ([57]).

(157) Furthermore, '[…] to assess whether an initial investment is economically indivisible, the Authority will take into account the technical, functional and strategic links and the immediate geographical proximity. The economic indivisibility will be assessed independently from ownership' ([58]). As previously noted, the location and the nature of the project has not changed, whereas the main parties are the same in both the 2009 and the 2011 agreements. The Icelandic authorities have stressed the fact that the potential level of investment is now lower — as the three phases originally planned for the construction of the wholesale data centre have been replaced by *ad hoc* build-outs of smaller modules, and that Verne, as part of its new investment strategy, actively sought to resell buildings back to the local authorities, for the purposes of improving its financial position. However, this does not reflect any technical, functional or strategic differences between the original investment project and the project in the Verne Investment Agreement. Rather, on the basis of the information before it, the Authority considers this development to be a policy or a commercial decision stemming from the company's endeavours to respond to its customers ([59]).

(158) Finally, according to the 2007 RAG: '[…] to establish whether a large investment project constitutes a single investment project, the assessment should be the same irrespective of whether the project is carried out by one undertaking, by more than one undertaking sharing the investment costs or by more undertakings bearing the costs of separate investments within the same investment project (for example in the case of a joint venture)' ([60]). Accordingly, the Authority considers any differentiation as regards the contractual parties to be irrelevant for the purposes of determining the indivisibility of an investment project.

(159) The Icelandic authorities further refer to a new injection of capital into VRE II at the end of 2011, arguing to the effect that this entails a structural change of the original investment project. According to the Icelandic authorities, VRE II is a new entity, established in 2011 to benefit from the Scheme, further to the finalisation of Verne's participation in the Scheme. Without prejudice to any possible decision on the part of the Authority to initiate a separate investigation concerning the said injection, the Authority understands this injection to cover the additional eligible costs of the project concerned. Nevertheless, the Authority underlines that, in accordance with the 2007 RAG, the total eligible costs are to be determined at a certain amount before the project starts. As soon as the project starts, it is not possible to artificially increase these eligible costs and the aid amount, given that the incentive effect of such aid is assessed at the time the aid is granted.

(160) Further, the Icelandic authorities state that the Verne Investment Agreement imposes certain obligations that were not part of the previous agreement. To this effect, the Authority considers that the provisions of the Verne Investment Agreement concerning the imposition of legal obligations, such as restrictions on capital controls, industrial charges, street connection fees, etc., and/or the impositions of additional obligations as regards the transfer of shares, constitute administrative changes that do not alter the nature of the original project under the previous agreement.

(161) Moreover, the question of whether or not the State aid benefits differ does not make any difference for the purposes of assessing the investment character of the project. The Authority notes that the Verne Investment Agreement provides for different terms concerning the income tax payable by the company or the duration of the agreement. However, as has been confirmed by the Icelandic authorities, this has been done in order to be in conformity with the terms of the Scheme. Therefore, it neither alters the investment character of the project, nor proves that this is a new unrelated project.

(162) In view of the above, the Authority considers the Verne Investment Agreement to be an additional investment for work that had already started with the purchase of buildings on 26 February 2008.

([57]) Paragraph 49.
([58]) Footnote 47.
([59]) See letter from the Icelandic authorities, dated 8 July 2013, page 15.
([60]) Ibid.

(163) The Authority has not received any additional information, from either the Icelandic authorities or Verne, to substantiate their claim that this is a new investment project. In particular the parties have provided no such information that persuades the Authority that it might be possible to differentiate Verne's activities on the basis of a technical, functional or strategic characteristics.

(164) As previously noted, the Scheme, as approved, excluded any award of aid to projects where work had started before a company entered into an agreement with the Icelandic authorities under the Scheme. Furthermore, the Icelandic authorities confirmed that the Scheme would exclude the award of aid to projects which started before the date of publication of the final text of the Scheme. Therefore, the Authority takes the view that any aid awarded to Verne could only have met the incentive test set out in the Scheme by virtue of the amendments introduced by the Supplementary Regulation ([61]).

(165) However, in light of the Icelandic authorities' assertion that the Verne project is not covered by the amendments to the Incentive Regulation made by the Supplementary Regulation, the Verne Investment Agreement must be considered as falling outside the scope of the Scheme, as approved, since the project had started long before the date of publication of the final text of the Scheme. Accordingly, the Authority will assess the compatibility of the Verne Investment Agreement as a new, *ad hoc*, aid measure.

5.1.2. **Large Investment Project — the need for in-depth analysis**

(166) According to paragraph 3 of the LIP Guidelines and paragraph 49 of the 2007 RAG, a large investment project is an initial investment with an eligible expenditure above EUR 50 million. As noted in the Preamble to the Verne Investment Agreement, Verne and the Investors estimate that the potential level of investment for the project could exceed USD 675 million. As discussed above in relation to the Becromal project, the LIP Guidelines only apply to certain large investment projects. The Icelandic authorities have submitted no information to the Authority concerning the aid intensity or the eligible costs involved in the Verne project. Nor have they provided any information regarding the conditions for the detailed verification obligation set out in the LIP Guidelines, to which paragraphs 57 (a) and (b) of the 2007 RAG refer (i.e. that the aid beneficiary accounts for more than 25 % of the products concerned on the market concerned, and that the production capacity created by the project is more than 5 % of the market for the product concerned). In the Authority's view there is nothing to indicate that the Verne project exceeds the thresholds provided for in paragraph 57 of the 2007 Guidelines.

(167) The Authority therefore concludes that the in-depth analysis provided for in the LIP Guidelines does not apply to the Verne Investment Agreement.

5.1.3. **Incentive effect**

(168) As already mentioned in recital 153 work had already started for the project in February 2008, when Verne bought five buildings from the Icelandic State. Subsequently, Verne, in 2008 and 2009, refurbished the two large warehouses (buildings 868 and 869) as part of the initially-planned multi-building campus ([62]). Since the acquisition and renovation of these buildings (directly linked to the establishment of Verne's data centre) is regarded as an initial investment, the date on which work on the project began must be considered to be the date of the purchase of these buildings ([63]). The Authority has received no information enabling it to support the possibility that the Icelandic authorities had committed to grant aid to the project before the start of work. Indeed, on the contrary, the Icelandic authorities have now confirmed that they did not enter into any agreement with Verne on the granting of incentives prior to the Verne Investment Agreement, dated 27 September 2011. According to the Icelandic authorities the 2009 investment agreement was only initialled but not signed, and

([61]) See also paragraphs 131-134 of the Opening Decision.

([62]) According to information provided by the Icelandic authorities, the demolition, engineering, design, project management and other site preparation work carried out over the period through October 2008 totalled USD 8,1 million and amounted to a further USD 10 million in the period November 2008 through December 2009, including physical construction and purchase of electrical and mechanical gear.

([63]) See in this respect Decision 2011/110/EU, recital 79.

therefore it did not produce any legal effect. The reason the Verne Investment Agreement does not refer to any previous agreement, according to the Icelandic authorities, is because there were no previous signed investment agreements with Verne.

(169) In recitals 131 to 134 of the Opening Decision, the Authority expressed doubts as to whether or not the Verne Investment Agreement fulfils the incentive effect condition of the 2007 RAG. The Icelandic authorities, in their reply to the Opening Decision, argued that without the investment agreement the project would have been abandoned due to the financial crisis ([64]). Moreover, they consider that the Authority should follow the European Commission's approach in many of its decisions not to raise objections against relief granted to financial institutions, where an incentive effect was not required as a pre-condition for compatibility.

(170) The Authority cannot accept this line of reasoning. The Commission's decision-making practice in the context of the financial crisis related only to aid given to the financial sector, using primarily Article 107(3)(b) TFEU (equivalent to Article 61(3)(b) of the EEA Agreement) as a legal basis. In such cases, aid was granted to remedy a serious disturbance affecting the entire economy of a Member State. The General Court has repeatedly stated that this provision must be applied restrictively ([65]). The Authority considers that no parallels can be drawn with State aid accorded to companies as regional aid under the 2007 RAG, where the objective lies in the development of a specific geographically-defined area and the incentive effect constitutes a main compatibility principle. Accordingly, the Authority cannot follow in this instance the approach taken by the Commission to State aid given to financial institutions in the context of the financial crisis.

(171) Furthermore, the Icelandic authorities did not provide any information to justify the necessity of aid for completing the project. If, as the Icelandic authorities argue, the project would not have been completed without the aid, they should have provided information and analysis enabling the Authority to verify this claim. This analysis would have had to take into account, inter alia, profitability calculations for the project with or without the aid, sensitivity analyses, and a detailed account of how the financial crisis influenced the investment decision.

(172) Moreover, the Icelandic authorities have not demonstrated that circumstances exist which (despite work having started on the project before the grant of the aid) are capable of ensuring that the test for an incentive effect is nonetheless met ([66]).

(173) In view of the above, the Authority concludes that the incentive effect condition is not satisfied as regards the Verne Investment Agreement.

(174) This finding alone is sufficient to establish that the Verne Investment Agreement is incompatible with the functioning of the EEA Agreement pursuant to Article 61(3)(c) and the 2007 RAG.

(175) However, for completeness' sake the Authority will also examine the specific provisions of the agreement and assess whether they comply with the conditions set out in the 2007 RAG.

5.1.4. **The investment costs and aid ceiling**

(176) For the tax measures granted under the Verne Investment Agreement to be characterised as investment aid:

— they must be linked to the carrying-out of the specific project,

— they must be based on an amount invested in the region,

([64]) Specifically, the Icelandic authorities state that: (i) Verne's capital expenditure dropped from USD 8,5 million in 2009 to USD 1,54 million in 2010; (ii) layoffs had taken place to keep the company afloat; (iii) the proposed investment phases under the original project were obsolete as of December 2009 and would require significant refurbishment; (iv) the only new external investor available to Verne since 2009 has been The Wellcome Trust, which would not invest new capital into a data centre project in the absence a clear commitment of the Icelandic State to provide the aid; and (v) inward investments were not reliable.

([65]) Case T-132/96 *Sachsen-VW* v *Commission* [1999] ECR II-3663, paragraph 167.

([66]) Case T-394/08 *Regione autonoma della Sardegna and Others* v *Commission* [2011] ECR II-6255, paragraph 226.

— it must be possible to quantify the aid,

— there must be a ceiling expressed as a percentage of the amount invested in the region ([67]).

(177) The total investment costs in the Verne Investment Agreement are fixed at around USD 675 million. In the Opening Decision the Authority drew the preliminary conclusion that there had not been a clear link in the agreement between the investment costs and the aid. In this context, the eligible costs were not specifically defined, the aid had not been quantified, and no aid ceiling had been expressed. The Icelandic authorities have provided no information to contradict those preliminary conclusions. The absence of these elements from the Verne Investment Agreement runs counter to the provisions of the 2007 RAG.

(178) As already mentioned in recital 44 above, the Icelandic authorities have stated that the Invest in Iceland Agency performed a cost-benefit analysis for each project prior to the conclusion of any agreement, and the Incentive Committee evaluated whether the projects met the criteria on eligibility laid down in Act 99/2010 and the Incentives Regulation.

(179) According to the 2007 RAG, '[…] regional investment aid is calculated either in reference to material and immaterial investment costs resulting from the initial investment project or to (estimated) wage costs for jobs directly created by the investment project […]. The level of the aid is defined in terms of intensity compared with reference costs.' ([68]).

(180) In order for the Authority to assess the compatibility of the aid measure according to the 2007 RAG, the aid ceiling must be clearly expressed in reference to specific, eligible investment costs. The fact that the Icelandic authorities have set up a mechanism for checking *ex post* the eligibility of projects with the Scheme is irrelevant for the Authority's assessment of compatibility, as such a mechanism does not guarantee that the aid intensity in gross grant equivalent is discounted to its value and expressed as a percentage of the discounted value of the eligible costs, nor does it guarantee that the eligible expenditure envisaged in the Verne Investment Agreement relates to the investment costs for tangible assets as provided for in the 2007 RAG ([69]).

(181) In light of the above, the Authority concludes that the Verne Investment Agreement does not comply with the conditions set out in the 2007 RAG, since (i) the agreement does not demonstrate the eligible costs, which the investment should have reflected upon; (ii) the aid is not properly quantified; and (iii) there is no calculation methodology as regards the aid intensity for the project.

5.1.5. **Additional aid in case of amendments of the Scheme**

(182) Article 23.7 of the Verne Investment Agreement sets out an unconditional obligation for the Icelandic authorities 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.

(183) Such a provision guarantees the beneficiary the right to receive aid beyond the initial grant of aid made under the Scheme as approved by the Authority. Consequently, such aid falls outside the scope of the Scheme.

(184) The Authority concludes that any aid granted under the above provision should be classified as operating aid, since it is not linked to an initial investment. Such operating aid is incompatible with the EEA Agreement. In particular, the aid is not granted in respect of a predefined set of eligible expenditures or costs, as is stipulated in paragraph 66 of the 2007 RAG.

5.1.6. **Conclusion with regard to the Verne Investment Agreement**

(185) On the basis of the above, the Authority concludes that any aid granted under the Verne Investment Agreement is new, *ad hoc* State aid which is incompatible with the functioning of the EEA Agreement pursuant to Article 61(3)(c).

([67]) See Decision No 390/10/COL, Section II.3.3.
([68]) Paragraphs 28 and 33.
([69]) Paragraphs 33 and 39.

5.2. *The Kísilfélagið Investment Agreement*

5.2.1. **Effect of the Supplementary Regulation's amendments**

(186) The Kísilfélagið Investment Agreement refers to the construction, in two or more steps, of a silicon production plant in Helguvík, in the municipality of Reykjanesbær.

(187) In its Opening Decision, the Authority took the preliminary view that the Kísilfélagið Investment Agreement refers to a previous agreement, entered into between the same parties for the same project on 29 May 2009 ([70]). As the Preamble of the Kísilfélagið Investment Agreement expressly indicates: '[…] 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' and that '[t]his Investment Agreement is therefore a follow-on agreement of the Previous Investment Agreement dated 29 May 2009' ([71]).

(188) Furthermore, Article 2.2 of the agreement of 29 May 2009 states that: '[t]he Complete Agreement will include but not be limited to provisions relating to depreciation and write off on fixed assets and other accounting standards, exemption from government fees, tax-rate and general taxation of the Company, Tomahawk and the Investors, tariffs on import and export, excise duties etc.'. Moreover, point 1.1 (f.1) thereof states that '[t]he term of this Investment Agreement and the subsequent Complete Investment Agreement shall be not less than 20 years from execution […]. This Investment Agreement shall be replaced by the Complete Investment Agreement and therefore be terminated when the Complete Investment Agreement becomes legally binding […]'.

(189) The Icelandic authorities have stated that the amendments to the Scheme effected by the Supplementary Regulation were aimed at the Becromal Investment Agreement, and that no other projects that were initiated prior to the entry into force of the Scheme were granted incentives under the Scheme.

(190) Although Kísilfélagið had entered into an agreement with the Icelandic authorities prior to the entry into force of the Scheme, work on the project set out in the 2009 agreement had not yet started when the Kísilfélagið Investment Agreement was signed under the Scheme. The project would therefore, given that the incentive effect test was met, have qualified for incentives under the Scheme regardless of the amendments introduced by the Supplementary Regulation. Moreover, Kísilfélagið did not benefit from the amendments made by the Supplementary Regulation to Articles 8 and 20 of the Incentive Regulation.

(191) The Authority accordingly concludes that the amendments introduced by the Supplementary Regulation did not have an effect on the Kísilfélagið Investment Agreement.

5.2.2. **Incentive effect**

(192) The Authority notes that, as confirmed by the Icelandic authorities, work on the project has not as yet begun. Moreover, it is unclear whether or not it will ever begin. The Authority is not aware of construction having started on the Kísilfélagið project or firm commitments having been issued to order equipment. Therefore, no aid was granted prior to the beneficiary having started work on the project.

(193) The Authority accordingly concludes that the Scheme's incentive effect condition is satisfied as regards the Kísilfélagið Investment Agreement.

5.2.3. **The investment costs and aid ceiling**

(194) Although the Kísilfélagið Investment Agreement satisfies the Scheme's incentive effect condition the Icelandic authorities agree with the Authority's preliminary conclusion that the Kísilfélagið Investment Agreement provided for further incentives that went beyond the scope of the Scheme as approved ([72]).

([70]) See paragraphs 118-130.
([71]) Sections N and O of the Preamble.
([72]) As noted above in recitals 33 to 34.

(195) 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 a start or expiry date for the construction of the plant, nor does it provide for any of the steps required for such a construction to take place. Moreover, the agreement does not make reference to eligible investment costs, nor does it stipulate the aid intensities or an aid ceiling. Applying *mutatis mutandis* the reasoning set out in recitals 176 to 181 above, in respect of the Verne Investment Agreement, the Authority considers that these elements affect the compatibility assessment of the Kísilfélagið Investment Agreement in its entirety, and as a result they should be assessed as a non-severable part of the agreement.

(196) In view of the above, the Authority concludes that the Kísilfélagið Investment Agreement does not fully comply with the conditions set out in the 2007 RAG since (i) the agreement does not demonstrate the eligible costs, which the investment should have reflected upon; (ii) the aid is not properly quantified; and (iii) there is no calculation methodology as regards the aid intensity for the project.

(197) Accordingly, the Kísilfélagið Investment Agreement must be considered to be new *ad hoc* aid, falling outside the scope of the Scheme as approved.

5.2.4. **Additional aid in case of amendments of the Scheme**

(198) Article 22.8 of the Kísilfélagið Investment Agreement sets out an unconditional obligation for the Icelandic authorities 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 to be more beneficial.

(199) Such a provision guarantees the beneficiary the right to receive aid beyond the initial grant made under the Scheme. Consequently, such aid falls outside the scope of the Scheme as approved by the Authority. The Icelandic authorities have confirmed that they respect the Authority's view that this application of the Scheme is not consistent with the Scheme as approved. They have therefore committed to delete this provisions from the agreement. Nevertheless, the Icelandic authorities did not notify this *ad hoc* measure to the Authority, as they should have done pursuant to Article 1(3) of Part I of Protocol 3.

(200) The Authority considers that any aid granted under the above provision should be classified as operating aid, since it is not linked to an initial investment. Such operating aid is *prima facie* incompatible with the EEA Agreement, and the Authority has received no information or arguments as to why it might nonetheless be compatible. 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 2007 RAG.

5.2.5. **Conclusion with regard to the Kísilfélagið Investment Agreement**

(201) On the basis of the above, the Authority concludes that the Kísilfélagið Investment Agreement complies with the incentive effect condition set out in the 2007 RAG and Kísilfélagið was therefore eligible to receive aid under the Scheme.

(202) However, the Authority further concludes that the Kísilfélagið Investment Agreement does not comply with the conditions set out in the 2007 RAG, since there are neither references to eligible investment costs, nor to the aid intensities and aid ceiling. The Authority thus considers any aid granted under the Kísilfélagið Investment Agreement to constitute incompatible State aid pursuant to Article 61(3)(c) of the EEA Agreement.

5.3. ***The Thorsil Investment Agreement***

5.3.1. **Ad hoc aid measure**

(203) According to the information available to the Authority, the Thorsil Investment Agreement is not related to any earlier investment agreement.

(204) Nevertheless, the Authority in the Opening Decision expressed doubts as to whether Article 15.3 of the Thorsil Investment Agreement provided for aid to be granted outside the approved Scheme ([73]).

(205) As noted above in recitals 33 to 34, the Icelandic authorities agree with the Authority's preliminary conclusion that the agreement provides for further incentives than were permitted by the Scheme.

(206) In any case, since the agreement has already entered into force, the Authority cannot exclude the possibility that aid was granted outside the approved Scheme. The Authority will thus assess the additional incentives provided for in Article 15.3 of the Thorsil Investment Agreement as constituting *ad hoc* aid.

5.3.2. **Incentive effect**

(207) 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 tons.

(208) According to the Icelandic authorities, the plant's start-up was scheduled to take place in October 2014. However, construction on the plant has still not commenced and it is unclear whether the project will materialise. Therefore, it is clear that no aid was granted prior to the beneficiary having started work on the project. The Authority accordingly concludes that the incentive effect condition is satisfied as regards the Thorsil Investment Agreement.

5.3.3. **The investment costs and aid ceiling**

(209) Under the Thorsil Investment Agreement, the construction of the silicon metal production plant is envisaged to take place in the Municipality of Ölfus with a scheduled start-up date of production of 1 October 2014. The agreement does however not provide for a start or expiry date for the construction of the plant, nor does it provide for any of the steps required for this construction to take place. Moreover, the agreement does not makes a reference to eligible or total investment costs, nor does it stipulate the aid intensities or an aid ceiling.

(210) Applying *mutatis mutandis* the reasoning set out in recitals 176 to 181 above, in respect of the Verne Investment Agreement, the Authority considers that these elements affect the compatibility assessment of the Thorsil Investment Agreement in its entirety, and as a result they should be assessed as a non-severable part of the agreement.

(211) In view of the above, the Authority concludes that the Thorsil Investment Agreement does not fully comply with the conditions set out in the 2007 RAG since (i) the agreement does not demonstrate the eligible costs, which the investment should have reflected upon; (ii) the aid is not properly quantified; and (iii) there is no calculation methodology as regards the aid intensity for the project.

(212) Accordingly, the Thorsil Investment Agreement must be considered to be new *ad hoc* aid, falling outside the scope of the Scheme as approved.

5.3.4. **The possibility for an extended period of tax exemptions**

(213) Article 15.3 of the Thorsil Investment Agreement provides for the possibility of an extension of the aid period beyond the maximum duration provided for in the Scheme, as approved. This *ad hoc* additional incentive measure was not notified to the Authority, as it should have been pursuant to Article 1(3) of Part I of Protocol 3.

([73]) Section 4.3.5.

(214) The possibility for the extended aid period is not linked to an initial investment, but instead reduces the costs which Thorsil would normally have to bear in the course of pursuing its day-to-day business activities. It consequently constitutes operating aid. Such operating aid is *prima facie* incompatible with the EEA Agreement, and the Authority has received no information or arguments as to why it might nonetheless be compatible. In particular, the measures are not granted in respect of a predefined set of eligible expenditures or costs, as it is stipulated in paragraph 66 of the 2007 RAG.

5.3.5. **Conclusion with regard to the Thorsil Investment Agreement**

(215) On the basis of the above, the Authority concludes that the Thorsil Investment Agreement complies with the incentive effect condition set out in the 2007 RAG and that Thorsil was therefore eligible to receive aid under the Scheme.

(216) The Authority further concludes that the Thorsil Investment Agreement does not comply with the conditions set out in the 2007 RAG, since there are neither references to eligible and total investment costs, nor to the aid intensities and aid ceiling. The Authority thus considers any aid granted under the Thorsil Investment Agreement to constitute incompatible State aid pursuant to Article 61(3)(c) of the EEA Agreement.

5.4. ***The GMR Endurvinnslan Investment Agreement***

5.4.1. **Ad hoc measure**

(217) The GMR Endurvinnslan Investment Agreement is not related to any earlier investment agreements, according to the information available to the Authority.

(218) Nevertheless, the Authority in the Opening Decision raised doubts as to whether Article 22.7 of the GMR Endurvinnslan Investment Agreement provided for aid to be granted outside the approved Scheme ([74]).

(219) As noted above in recitals 33 to 34, the Icelandic authorities agree with the Authority's preliminary conclusion that the agreement provides for further incentives than those permitted by the Scheme.

(220) In any case, since the agreement has already entered into force, the Authority cannot exclude the possibility that aid was granted outside the approved Scheme. The Authority will thus assess these additional incentives provided for in Article 22.7 as constituting *ad hoc* aid.

5.4.2. **Incentive effect**

(221) On 7 May 2012 the Icelandic authorities 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 intended to commence production at the end of 2012 and to have the plant fully operational in 2014.

(222) As has been confirmed by the Icelandic authorities, no aid was granted prior to the beneficiary having started work on the project.

(223) The Authority accordingly concludes that the incentive effect condition is satisfied as regards the GMR Endurvinnslan Investment Agreement.

(224) The Authority nevertheless has to verify whether certain elements of the agreement fulfil the criteria set out in the 2007 RAG.

([74]) See Section 4.3.6 of the Opening Decision.

5.4.3. **The investment costs and aid ceiling**

(225) The agreement does not makes a reference to eligible investment costs, nor does it stipulate the aid intensities or an aid ceiling.

(226) Applying *mutatis mutandis* the reasoning set out in recitals 176 to 181 above, in respect of the Verne Investment Agreement, the Authority considers that these elements affect the compatibility assessment of the GMR Endurvinnslan Investment Agreement in its entirety, and as a result they should be assessed as a non-severable part of the agreement.

(227) In view of the above, the Authority concludes that the GMR Endurvinnslan Investment Agreement does not fully comply with the conditions set out in the 2007 RAG since (i) the agreement does not demonstrate the eligible costs, which the investment should have reflected upon; (ii) the aid is not properly quantified; and (iii) there is no calculation methodology as regards the aid intensity for the project.

(228) Accordingly, the GMR Endurvinnslan Investment Agreement must be considered to be new *ad hoc* aid, falling outside the scope of the Scheme as approved.

5.4.4. **Additional aid in case of amendments of the Scheme**

(229) Article 22.7 of the GMR Endurvinnslan Investment Agreement contains an identical clause to that which is set out in the Kísilfélagið Investment Agreement (see recitals 198 to 200) as regards the unconditional right to request increased aid, should the Scheme be expanded.

(230) As noted in recital 199 above, such a provision guarantees the beneficiary the right to receive aid beyond the initial grant made under the Scheme. Consequently, such aid falls outside the scope of the Scheme. The Icelandic authorities have confirmed that they respect the Authority's view that this application of the Scheme is not consistent with the Scheme as approved and have therefore committed to delete this provisions from the agreement. Nevertheless, the Icelandic authorities did not notify this *ad hoc* measure to the Authority pursuant to Article 1(3) of Part I of Protocol 3.

(231) The Authority considers that any aid granted under the above provision should be classified as operating aid, since it is not linked to an initial investment. Such operating aid is *prima facie* incompatible with the EEA Agreement, and the Authority has received no information or arguments as to why it might nonetheless be compatible. In particular, the aid is not granted in respect of a predefined set of eligible expenditures or costs, as it is stipulated in paragraph 66 of the 2007 RAG.

5.4.5. **Conclusion with regard to the GMR Endurvinnslan Investment Agreement**

(232) On the basis of the above, the Authority concludes that the GMR Endurvinnslan Investment Agreement complies with the incentive effect condition set out in the 2007 RAG and that GMR Endurvinnslan was therefore eligible to receive aid under the Scheme.

(233) The Authority further concludes that the GMR Endurvinnslan Investment Agreement does not comply with the conditions set out in the 2007 RAG, since there are neither references to eligible investment costs, nor to the aid intensities and aid ceiling. The Authority thus considers any aid granted under the GMR Endurvinnslan Investment Agreement to constitute incompatible State aid pursuant to Article 61(3)(c) of the EEA Agreement.

5.5. ***Conclusion***

(234) In view of the above, the Authority concludes that the Verne Investment Agreement was in its entirety concluded outside the provisions of the Scheme as approved by the Authority, constituting thus an *ad hoc* measure. The assessment showed that the provisions of the Verne Investment Agreement provide for aid that is incompatible with the functioning of the EEA Agreement pursuant to Article 61(3)(c).

(235) Furthermore, although the Thorsil, Kísilfélagið and GMR Endurvinnslan projects fulfil the incentive effect criteria for eligibility under the Scheme, the respective agreements, assessed also as *ad hoc* measures, do not comply with the conditions set out in the 2007 RAG, since there are neither references to eligible investment costs, nor to the aid intensities or an aid ceiling that these costs should correspond to. The agreements also include certain additional provisions that provide for aid to be granted outside the approved Scheme. Therefore, the Authority concludes that these agreements constitute in their entirety incompatible State aid pursuant to Article 61(3)(c).

6. PROCEDURAL REQUIREMENTS

(236) Pursuant to Article 1(3) of Part I of Protocol 3, '[t]he 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'.

(237) The Icelandic authorities did not notify the alterations to the Scheme which were brought about by the Supplementary Regulation, allowing for aid to be granted to projects upon which work had started before the Scheme entered into force. Moreover, the Icelandic authorities did not notify the Verne, Thorsil, Kísilfélagið and GMR Endurvinnslan Investment Agreements to the Authority, as they considered those investment agreements to fall within the Scheme. However given the conclusion of the Authority in recital 235 that these Investment Agreements fall in their entirety outside the scope of the Scheme as approved, it follows that these agreements should have been notified to the Authority to be assessed as *ad hoc* measures.

(238) As the amendments to the Scheme entail State aid that is severable from the Scheme, and the Verne, Thorsil, Kísilfélagið and GMR Endurvinnslan Investment Agreements entail State aid that falls outside the scope of the approved Scheme, they were in principle subject to the individual notification requirements set out in the 2007 RAG.

(239) The Authority therefore concludes that the Icelandic authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3 to the EEA Agreement.

7. LEGITIMATE EXPECTATIONS AND LEGAL CERTAINTY

(240) The fundamental legal principles of legitimate expectations and legal certainty can be invoked by beneficiaries of aid to challenge an order for recovery of unlawfully granted State aid. The principles only apply, however, in exceptional circumstances and an undertaking cannot normally entertain legitimate expectations that aid is lawful unless it has been granted in accordance with the procedure for notifying the aid to the Authority (or European Commission) ([75]). This principle has been confirmed by the Court of Justice: 'In a situation such as that in the main proceedings, the existence of an exceptional circumstance also cannot be upheld in the light of the principle of legal certainty, since the Court has already held, essentially, that, so long as the Commission has not taken a decision approving aid, […] the recipient cannot be certain as to the lawfulness of the aid, with the result that neither the principle of the protection of legitimate expectations nor that of legal certainty can be relied upon.' ([76]).

(241) The Court of Justice has stated that in principle a legitimate expectation that aid is lawful cannot be invoked unless that aid has been granted in compliance with the procedure laid down in Article 1(3) in Part I of Protocol 3 ([77]), remarking that a diligent businessman should normally be able to determine whether that procedure has been followed ([78]).

([75]) Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, paragraph 14; Case C-169/95 *Commission* v *Spain*, [1997] ECR I-135, paragraph 51; Case C-24/95 *Land Rheinland-Pfalz* v *Alcan Deutschland GmbH*, [1997] ECR I-1591, paragraph 25.

([76]) Case C-1/09 *Centre d'Exportation du Livre Français (CELF), Ministre de la Culture et de la Communication* v *Société Internationale de Diffusion et d'Édition* [2010] ECR I-2099, paragraph 53. See also Case C-91/01 *Italy* v *Commission* [2004] ECR I-4355, paragraphs 66 and 67.

([77]) Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, paragraph 14, Joined Cases C-183/02 P and C-187/02 P *Demesa and Territorio Histórico de Álava* v *Commission* [2004] ECR I-10609, paragraph 51.

([78]) Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, paragraph 14, Case C-169/95 *Spain* v *Commission* [1997] ECR I-135, paragraph 51.

(242) Only in exceptional circumstances may a recipient of aid, granted unlawfully because it was not notified, rely on legitimate expectations that the aid was lawful in order to oppose its repayment ([79]). The Court of Justice has held that an entity may rely on the principle of protection of legitimate expectations where a European Union authority has caused it to entertain expectations which are justified ([80]).

(243) According to the Icelandic authorities, the Authority's officials at a meeting in Brussels on 27 May 2011 gave the 'green light' for the Icelandic authorities and Verne to engage in a revised agreement, which would allow Verne to benefit from the Scheme. Although the Icelandic authorities recognise that this type of representation by the Authority, or by its individual employees, are not actionable according to the jurisprudence of the EU Courts, they have requested the Authority to take due account of what transpired at the aforementioned meeting and accordingly conclude that the compatibility of the Verne Investment Agreement with the Scheme has been established.

(244) The Authority agrees with the Icelandic authorities that statements from an Authority official at an informal meeting cannot be relied upon as an argument for the compatibility of aid and do not create legitimate expectations among beneficiaries. The Authority has exclusive competence to assess the compatibility of State aid with the EEA Agreement. Until the Authority has adopted a final decision concerning a given measure, the measure in question has not been cleared as compatible with the State aid rules of the EEA Agreement. The Authority has to date not taken any decision approving regional aid to Verne.

(245) Moreover, the Authority rejects the Icelandic authorities' claim that it gave a 'green light' for Verne to receive regional aid under the Scheme as approved. The Authority has in its correspondence with the Icelandic authorities never indicated that the Verne project could be eligible to receive regional aid. On the contrary, the Authority has, since 2010, when the pre-notification discussions concerning the Verne project took place, expressed doubts as to whether the incentive effect test was met. By letter dated 31 March 2010, the Authority expressed doubts as to whether the Icelandic authorities had demonstrated the real incentive effect of the different tax and fee concession envisaged in the 2009 investment agreement. The Authority also made it clear that the Icelandic authorities had not put forward documentation to show that they issued a letter of intent to award the aid before work started on the project, and that the information they had put forward indicated that the work on the project started some time before the beneficiary and the Icelandic authorities entered into discussions regarding an investment agreement. As noted above in recital 153, the Icelandic authorities later withdrew the 2009 agreement and on 27 September 2011 concluded another agreement with Verne, in order for the project to be covered under the Scheme. The Verne Investment Agreement was not notified to the Authority and has consequently not been cleared as compatible with the State aid rules of the EEA Agreement.

(246) The Authority therefore cannot accept that arguments relating to legal certainty or legitimate expectations could be valid in this case, particularly in the light of the jurisprudence of the Court of Justice and the wide-ranging applicability of Article 61 of the EEA Agreement and Article 107 TFEU.

8. RECOVERY

(247) Aid granted without being notified to the Authority constitutes unlawful aid within the meaning of Article 1(f) of Part II of Protocol 3. It follows from Article 14 of Part II of Protocol 3 that the Authority shall decide that unlawful aid, which is incompatible with the State aid rules under the EEA Agreement must be recovered from the beneficiaries, unless this would be contrary to a general principle of law, pursuant to Article 14 of Part II of Protocol 3. The Icelandic authorities and the aid recipients did not submit any arguments to justify a general departure from a general principle of law.

(248) The obligation on a state to abolish incompatible aid is designed for the purpose of re-establishing the previously existing situation ([81]). By repaying the aid, the recipients forfeit the advantage which they have enjoyed over their competitors on the market, and the situation prior to payment of the aid is restored as far as this is possible ([82]).

([79]) Joined Cases C-183/02 P and C-187/02 P *Demesa and Territorio Histórico de Álava* v *Commission* [2004] ECR I-10609, paragraph 51.
([80]) Case T-290/97, *Mehibas Dordstelaan* v *Commission* [2000] ECR II-15 and Cases C-182/03 and C-217/03, *Belgium and Forum 187 ASBL* v *Commission* [2006] ECR I-05479, paragraph 147.
([81]) Joined Cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission* [1994] ECR I-04103, paragraph 75.
([82]) See Joined Cases E-17/10 and E-6/11 *The Principality of Liechtenstein and VTM Fundmanagement* v *EFTA Surveillance Authority* [2012] EFTA Court Report, p. 117, paragraphs 141-142.

(249) The recovery of the unduly granted State aid should include compound interest, in accordance with Article 14(2) in Part II of Protocol 3 and Article 9 and 11 of the Authority's Decision 195/04/COL of 14 July 2004 ([83]).

(250) The Icelandic authorities have so far provided limited information on the amount of aid granted under the Supplementary Regulation and the investment agreements. Moreover, they have not provided sufficient information on the dates on which the aid was at the disposal of the beneficiaries. The Authority is therefore not in a position at present to determine hereby the actual amounts to be recovered from the beneficiaries.

(251) The Icelandic authorities must send to the Authority an appropriate report of their progress in recovering the aid and must specify clearly the actual measures taken to effect immediate and effective recovery of the aid. In addition, the Icelandic authorities must, within two months of the notification of this Decision, send the documents proving that recovery of the unlawful and incompatible aid from the recipients is under way (e.g. circulars, recovery orders issued, etc.).

9. CONCLUSION

(252) The Authority concludes that the Icelandic authorities have unlawfully implemented the aid granted under the Supplementary Regulation (and the Becromal Investment Agreement as a consequence), in breach of Article 1(3) of Part I to Protocol 3. This State aid granted is incompatible with the functioning of the EEA Agreement and shall be recovered insofar as it has been paid out.

(253) The Authority concludes that the Icelandic authorities have unlawfully implemented the *ad hoc* State aid granted under the Verne Investment Agreement in breach of Article 1(3) of Part I to Protocol 3. This State aid is incompatible with the functioning of the EEA Agreement and shall be recovered insofar as it has been paid out.

(254) As regards the investment agreements with Kísilfélagið, Thorsil and GMR Endurvinnslan, the Authority considers that although the three projects fulfil the incentive effect criteria for eligibility under the Scheme, the agreements do not comply with the conditions set out in the 2007 RAG, since there are neither references to eligible investment costs, nor to the aid intensities and aid ceiling, and they are thus considered as new *ad hoc* incompatible State aid pursuant to Article 61(3)(c) of the EEA Agreement and the 2007 RAG. Moreover, these agreements include certain provisions, namely Articles 22.8 of the Kísilfélagið Investment Agreement, 15.3 of the Thorsil Investment Agreement and 22.7 of the GMR Investment Agreement, that provide for aid to be granted outside the approved Scheme. These provisions equally provide for aid that is incompatible with the functioning of the EEA Agreement pursuant to Article 61(3)(c) and the 2007 RAG. Any *ad hoc* aid granted on the basis of these agreements shall be recovered insofar as it has been paid out.

(255) Finally, it is noted that the measures suggested by the Icelandic authorities in recitals 52 and 53 above are not such as to put the Authority in a position to rule out the incompatibility of the aid at issue in the present case,

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure concerning the Icelandic Investment Incentives Scheme, with amendments notified by the Icelandic authorities is hereby closed.

The formal investigation procedure concerning the Marmeti Investment Agreement is hereby closed.

([83]) As amended by EFTA Surveillance Authority Decision No 789/08/COL of 17 December 2008, amending College Decision No 195/04/COL on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice as regards the standard forms for notification of aid (OJ L 340, 22.12.2010, p. 1, and EEA Supplement No 72, 22.12.2010, p. 1).

Article 2

The Supplementary Regulation entails State aid which is incompatible with the functioning of the EEA Agreement within the meaning of Article 61(3) thereof.

Article 3

The Becromal Investment Agreement entails State aid which is incompatible with the functioning of the EEA Agreement within the meaning of Article 61(3) thereof.

Article 4

The Verne Investment Agreement entails *ad hoc* State aid which is incompatible with the functioning of the EEA Agreement within the meaning of Article 61(3) thereof.

Article 5

The Kísilfélagið, Thorsil and GMR Endurvinnslan Investment Agreements do not comply with the conditions set out in the Scheme as approved by Decision No 390/10/COL, since the agreements neither contain references to eligible investment costs, nor to the aid intensities and aid ceiling.

The Kísilfélagið, Thorsil and GMR Endurvinnslan Investment Agreements entail *ad hoc* State aid which is incompatible with the functioning of the EEA Agreement within the meaning of Article 61(3) thereof.

Article 6

The Icelandic authorities shall take all necessary measures to recover from the beneficiaries the aid referred to in Articles 3, 4 and 5 which was unlawfully made available to them.

The aid to be recovered shall bear compound interest from the date on which it was at the disposal of the beneficiaries, until the date of its actual recovery.

Article 7

Recovery of aid shall be immediate and effective in accordance with the procedures of national law.

The Icelandic authorities must ensure that the recovery of aid is implemented within four months from the date of notification of this Decision.

The Icelandic authorities shall cancel any outstanding payments of the aid referred to in Articles 3 to 5, with effect from the date of notification of this Decision.

Article 8

The Icelandic authorities shall, within two months from the notification of this Decision, submit the following information to the Authority:

(a) the total amount (principal and recovery interests) to be recovered by the beneficiaries;

(b) the dates on which the sums to be recovered were put at the disposal of the beneficiaries;

(c) a detailed report on the progress made and the measures already taken to comply with this Decision;

(d) documents proving that recovery of the unlawful and incompatible aid from the recipients is under way (e.g. circulars, recovery orders issued etc.).

Article 9

This Decision is addressed to Iceland.

Article 10

Only the English language version of this decision is authentic.

Done at Brussels, 8 October 2014.

For the EFTA Surveillance Authority

Oda Helen SLETNES
President

Helga JÓNSDÓTTIR
College Member

CORRIGENDA

Corrigendum to Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts

(Official Journal of the European Communities L 395 of 30 December 1989)

On page 35, Article 5:

for: 'Member States shall bring into force, before 1 December 1991,',

read: 'Member States shall bring into force, before 21 December 1991,'.

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