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Ministry of Finance and Economic Affairs
Arnarhvoli
101 Reykjavík
Iceland

Subject: COVID-19 Closure grants

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform the Icelandic authorities that, having assessed the expansion of the scheme to compensate companies forced to close or halt their operations for public health reasons during the COVID-19 outbreak (“the measure”), it considers that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections¹ to the measure, as it is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(b). ESA has based its decision on the following considerations.

2 Procedure

- (2) The Icelandic authorities notified the measure on 6 November 2020.²

3 Description of the measure

3.1 Background

- (3) As recognised in the European Commission’s Communication on the [Temporary Framework](#) for state aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework”),³ the COVID-19 outbreak has caused a major shock to national economies. The containment measures adopted by the Icelandic Government and other national governments, such as social distancing requirements, travel restrictions, quarantines and lockdowns, have led to a sudden decline in demand for services nationally and globally.
- (4) As the outbreak has continued to resurface and strict measures to contain the spreading of the virus have had to be undertaken, general economic activity has slowed down significantly. Restrictions on large gatherings, a requirement for a minimum distance between persons and the outright prohibition on providing

¹ Reference is made to Article 4(3) of the Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

² Documents No 1161896, 1161898 and 1161900.

³ Communication from the Commission – Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak of 19 March 2020, OJ C 91, 20.3.2020, p. 1, amended four times, (i) on 3.4.2020, OJ C 112, 4.4.2020, p. 1, (ii) on 8.5.2020, OJ C 164, 13.5.2020, p. 3, (iii) on 29.6.2020, OJ C 218, 2.7.2020, p. 3, and (iv) on 13.10.2020, OJ C 340, 13.10.2020, p.1.

services requiring close proximity between people have had significant effect in this respect.

- (5) To counter the outbreak, the Icelandic authorities have implemented strong preventative public health measures. On 13 March 2020, outbreak control measures on a national level were implemented in Iceland, when the Government announced a four-week ban on mass gatherings for groups of more than 100 people, effective as of 16 March 2020.⁴
- (6) On 23 March 2020, due to the accelerated spreading of COVID-19 in Iceland, further restrictions were put in place.⁵ Gatherings were restricted to no more than 20 people. Places where the risk of infections was deemed high were mandated to close, including swimming pools, fitness centres, clubs, arcades and museums. All operations providing services requiring close proximity between people, or posing the risk of close proximity, such as sports facilities, hair salons and massage parlours, were closed. On 14 April 2020, the Government announced that restrictions would be gradually lifted as of 4 May 2020. However, certain restrictions remained in effect, i.e. swimming pools and gym facilities remained closed until 18 May 2020, and nightclubs, bars and similar businesses remained closed until 25 May 2020.
- (7) In an effort to combat the upsurge of COVID-19 in the autumn, the Government on 18 September 2020 announced the mandatory closing of clubs and bars in the Capital Region until 21 September 2020 (these restrictions were subsequently prolonged until 27 September 2020).⁶ On 3 October 2020, the Government announced that restrictions would be put in place for the whole of Iceland from 5 until 19 October 2020. Gatherings were restricted to no more than 20 people with a few exemptions. Places where the risk of infections was deemed high were mandated to close. Restrictions were tightened and extended on 6 and 18 October 2020. Finally, on 30 October 2020, the Government put in place stricter prevention measures until 17 November 2020, e.g. a ban on mass gatherings for groups of more than 10 people and the mandated closure of bars, swimming pools, hair salons, beauty salons and massage parlours and other similar operations that require close proximity between people.⁷
- (8) In order to provide support to those operators that had incurred a temporary loss of income due to the measures imposed by the Government to fight the spreading of COVID-19, the Parliament on 13 May 2020 passed Act No 38/2020 on financial backing for undertakings due to the coronavirus pandemic (“Act on closure grants”).⁸ The Act on closure grants established a scheme providing direct grants for those undertakings that were mandated to close or halt operations to prevent the spreading of COVID-19.⁹ The maximum aid amount per beneficiary for the

⁴ Notice No 217/2020 on the limitations of gatherings due to a pandemic, available online at: <https://www.stjornartidindi.is/Advert.aspx?RecordID=36a1875e-8868-4032-a9cb-cde8ac6e3c4d>.

⁵ Notice No 243/2020 on the limitations of gatherings due to a pandemic, available online at: <https://www.stjornartidindi.is/Advert.aspx?RecordID=63a79c00-2633-4a60-b0a0-447983b5f418>.

⁶ Regulation No 907/2020 on the limitations of gatherings due to a pandemic, available online at: <https://www.stjornartidindi.is/Advert.aspx?RecordID=ad1e49e0-8a72-4728-9e28-35e4ca76f76c>.

⁷ Regulation No 1051/2020 on the limitations of gatherings due to a pandemic, available online at: <https://www.stjornartidindi.is/Advert.aspx?RecordID=3edeac13-690b-4681-abbe-e3ab5fd18e6e>.

⁸ Available online at: <https://www.althingi.is/lagas/nuna/2020038.html>.

⁹ The referral to halt of business is aimed at those that could provide their services despite the closure of the place of business, e.g. hairdressers and beauticians.

period from 24 March to 3 May 2020 was ISK 800 000 per employee, but never more than ISK 2.4 million per undertaking (approx. EUR 15 000). For the period from 4 to 24 May 2020, the maximum amount was ISK 400 000 per employee, but never more than ISK 1.2 million per undertaking (approx. EUR 7 500). Given the relatively low amounts, the Icelandic authorities designed that scheme to comply with the *de minimis* Regulation.¹⁰ As of 30 October 2020, approximately 1 100 undertakings had received grants, in total amounting to roughly ISK 1.11 billion for the compensation period from 24 March to 24 May 2020.

- (9) In light of the additional closures and restrictions imposed this autumn, the Icelandic authorities intend to expand and prolong the scheme. The Icelandic authorities have now notified the measure, since these amendments are likely to entail that a number of undertakings will receive aid above the EUR 200 000 threshold in the *de minimis* Regulation.

3.2 Objective

- (10) The objective of the measure is to maintain the level of employment and economic activity in Iceland by supporting undertakings that have incurred a temporary loss of income due to the pandemic and measures imposed to fight the spreading of the virus.

3.3 National legal basis

- (11) The legal basis for the measure is Act No 38/2020 on closure grants, as amended by Act No 55/2020,¹¹ Act No 82/2020¹² and on 5 November 2020.¹³

3.4 Granting authority and the administration of the measure

- (12) Iceland Revenue and Customs will be responsible for processing the applications. Decisions taken by Iceland Revenue and Customs can be appealed to the Internal Revenue Board.

3.5 Beneficiaries

- (13) The beneficiaries of the measure are undertakings and self-employed in all sectors that have been affected by restrictions imposed to limit the COVID-19 outbreak. Beneficiaries must be registered as an employer pursuant to Article 5 of Act No 45/1987 on the Withholding of Public Levies at Source.¹⁴ Moreover, the beneficiaries must have been established by 1 February 2020, or, for those undertakings affected by Government restrictions imposed after 17 September 2020, at least one calendar month before the period for mandatory closing or halt of business commenced. The beneficiaries must have unlimited tax liability in

¹⁰ Commission Regulation (EU) No 1407/2013 of 18 December 2013 *on the application of Articles 107 and 108 of the Treaty of the Functioning of the European Union to de minimis aid* (OJ L 352, 24.12.2013, p. 1), incorporated into Article 1ea of Annex XV to the EEA Agreement, amended by Commission Regulation (EU) 2020/972 of 2 July 2020 *amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments* (OJ L 215, 7.7.2020, p. 3), see Joint Committee Decision No 115/2020.

¹¹ Available online at: <https://www.althingi.is/altext/stjt/2020.055.html>.

¹² Available online at: <https://www.althingi.is/altext/stjt/2020.082.html>.

¹³ Available online at: <https://www.althingi.is/altext/151/s/0288.html>.

¹⁴ Available online at: <https://www.althingi.is/lagas/nuna/1987045.html>.

Iceland in accordance with Article 1 or 2 of Act No 90/2003 on Income Tax (Act on Income Tax).¹⁵

(14) The conditions for receiving grants are as follows:

- The undertaking was required to close or halt its operations, due to Government restrictions imposed to control the outbreak of COVID-19.
- The undertaking must have experienced at least a 75% loss of income in April 2020 compared to April 2019, or, if the undertaking launched its business after 1 April 2019, its income in April 2020 should be compared to the average income over 30 days from the start of business to the end of February 2020, or, for undertakings affected by Government announcements that entered into force on 18 September 2020 or later the loss of income must be compared to an equally long period during the preceding calendar month, where there was no mandatory closure or halt of business.
- Income for the whole year of 2019 amounted to at least ISK 4.2 million (approx. EUR 25 000). If the undertaking launched its business after 1 January 2019, its annual income should be converted based on the month that it operated. For those undertakings affected by Government announcements that entered into force on 18 September 2020 or later, it is permitted to assume that the income is at least ISK 350 000 per month compared to the preceding calendar month where there was no mandatory closure or halt of business.
- The undertaking does not owe public duties or taxes for the last three years.
- The undertaking may not be in difficulty on 31 December 2019 in the meaning of Article 2(18) of the General Block Exemption Regulation (“GBER”),¹⁶ but beneficiaries may have entered into such difficulty thereafter as a result of the COVID-19 outbreak. However, this limitation does not apply to small or micro undertakings that have not already received aid with financial restructuring.
- Regardless the size of the undertaking, it will be excluded if it has been put under liquidation or bankruptcy proceedings.

(15) Furthermore, public entities, regional partnership companies (i. *byggðasamlög*) and publicly owned undertakings are excluded from receiving grants.

¹⁵ Available online at: <https://www.althingi.is/lagas/nuna/2003090.html>.

¹⁶ Commission Regulation (EU) No 651/2014 of 17 June 2014 *declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty* (OJ L 187, 26.6.2014, p. 1), referred to at point 1j of Annex XV to the EEA Agreement, as amended by Commission Regulation (EU) 2017/1084 of 14 June 2017 *amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating schemes for outermost regions and amending Regulation (EU) 702/2014 as regards the calculation of eligible costs* (OJ L 156, 20.6.2017, p. 1), see Joint Committee Decision No 185/2017, and Commission Regulation (EU) 2020/972 of 2 July 2020 *amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments* (OJ L 215, 7.7.2020, p. 3), see Joint Committee Decision No 115/2020.

3.6 Aid instrument, intensity, eligible costs, overlap with other schemes

- (16) The aid is in the form of direct grants. The grants constitute taxable income in accordance with the Act on Income Tax.
- (17) The amount of aid for each beneficiary per closure period shall be equivalent to the applicant's operational cost, within the meaning of Article 31 of the Act on Income Tax,¹⁷ excluding write-down and depreciation of assets during each closure period. However, the aid amount per beneficiary cannot exceed ISK 600 000 per employee for each 30-day closure, and this amount is proportionally lower for shorter periods. The maximum amount per undertaking, including those composed of several connected entities (linked enterprises),¹⁸ is ISK 120 million (approx. EUR 740 000).
- (18) Undertakings that were already in difficulty on 31 December 2019, as per the condition set out in GBER, can receive a maximum support of ISK 30 million (approx. EUR 185 000), which is below the maximum amount of EUR 200 000 referred to in the *de minimis* Regulation.¹⁹
- (19) The Icelandic authorities confirm that aid granted under the measure may be cumulated with *de minimis* aid, provided that the conditions of the *de minimis* Regulation are respected. It may also be cumulated with aid granted under the GBER, provided that the conditions of the relevant GBER provisions are respected.
- (20) To the extent that aid under different sections of the Temporary Framework is granted to the same undertaking, the relevant provisions of the Temporary Framework shall be respected.

¹⁷ As defined in the Act, [English translation](#): "Operational expenses, i.e. those expenses in the year that have resulted from the making of income, establishing it and maintaining it. This includes premiums that employees pay to acquire pensions rights in a pension fund [...], interest from debt, discounts, foreign exchange [...] and amounts spent to establish and maintain a return from assets in the business. [...] Furthermore, the remuneration that a person is to allocate to itself for any kind of work, occupation or services that are to be regarded as income in accordance with the Act on Income tax."

¹⁸ As set out in Article 3 in Annex I of the GBER: "Linked enterprises are enterprises which have any of the following relationships with each other: (a) an enterprise has a majority of the shareholders or members voting rights in another enterprise, (b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise, (c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association, (d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise."

¹⁹ This type of support falls outside the notified measure here under consideration because *de minimis* aid, being aid granted to a single undertaking over a given period of time that does not exceed the *de minimis* ceiling at EUR 200 000, is deemed not to meet all the criteria laid down in Article 61(1) EEA, and is therefore not subject to the notification procedure. Commission Regulation (EU) No 1407/2013 of 18 December 2013 *on the application of Articles 107 and 108 of the Treaty of the Functioning of the European Union to de minimis aid* (OJ L 352, 24.12.2013, p. 1), incorporated into Article 1ea of Annex XV to the EEA Agreement, amended by Commission Regulation (EU) 2020/972 of 2 July 2020 *amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments* (OJ L 215, 7.7.2020, p. 3), see Joint Committee Decision No 115/2020.

3.7 Budget and duration

- (21) The measure has an estimated budget of ISK 1 billion (approx. EUR 6 million), for the period from 18 September 2020, and the measure has been allocated a maximum budget of ISK 2 billion (approx. EUR 12 million).
- (22) The measure enters into force on 6 November 2020.
- (23) The beneficiaries will be able to submit application for aid up to and including 30 June 2021. The measure is intended to partially compensate for loss of income due to all mandatory closures or halt of business because of COVID-19 restrictions imposed from March 2020 until 30 June 2021.

4 Presence of state aid

- (24) 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.”
- (25) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (26) The measure will be financed through the State budget and will be administered by Iceland Revenue and Customs. The measure is therefore financed through State resources and imputable to the State.
- (27) The measure provides certain undertakings with financial support in the form of direct grants. The measure therefore confers an advantage on beneficiaries which they would not have obtained under normal market conditions. Furthermore, the measure is selective as it is only available to certain undertakings, i.e. those who have been mandated to close or halt their operations by the Icelandic Government.
- (28) The sectors in which the beneficiaries operate in are subject to intra-EEA trade, and the measure is therefore liable to distort competition and to affect trade.
- (29) In the light of the above assessment, ESA concludes that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

5 Procedural requirements

- (30) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“Protocol 3”): “The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. ... The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision.”

- (31) The Icelandic authorities have notified the measure and have not let the measure enter into force yet. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

6 Compatibility of the measure

6.1 Introduction

- (32) Pursuant to Article 61(3)(b) of the EEA Agreement, ESA can declare state aid compatible with the functioning of the EEA Agreement “to remedy a serious disturbance in the economy of an EC Member State or an EFTA State”.
- (33) The disturbance must affect the whole or an important part of the economy of the State concerned, and not merely that of one of its regions or part of its territory. This is in line with the requirement to interpret exceptions, such as Article 61(3)(b) of the EEA Agreement, strictly.
- (34) In the context of the current COVID-19 outbreak, the Commission adopted the Temporary Framework that sets out temporary state aid measures that are considered compatible under Article 107(3)(b) TFEU, which corresponds to Article 61(3)(b) of the EEA Agreement. The Commission confirms that the current situation, specifically the effect of the containment measures adopted by national authorities on their economies, justify that aid can be granted on the basis of Article 107(3)(b) TFEU. This type of aid is available for a limited period to remedy the liquidity shortage faced by undertakings to ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability.
- (35) In order to ensure uniform application of the state aid rules throughout the European Economic Area, in line with the objective of homogeneity established in Article 1 of the EEA Agreement, ESA applies the compatibility conditions set out in the Temporary Framework to state aid granted by the EEA EFTA States under Article 61(3)(b) in the context of the COVID-19 outbreak.

6.2 Limited amounts of aid

- (36) The measure is one of a series of measures conceived at the national level by the Icelandic authorities to remedy a serious disturbance in their economy. The importance of the measure in order to preserve employment and economic continuity is widely accepted, and the measure is of a scale which can be reasonably anticipated to produce the desired effects and contribute to the overall recovery of the Icelandic economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“Limited amounts of aid”) described in Section 3.1 of the Temporary Framework.
- (37) During the current circumstances, temporary limited amounts of aid to undertaking that find themselves facing a sudden shortage or even unavailability of liquidity can be an appropriate, necessary and targeted solution. The compatibility conditions for this type of measures are set out in Section 3.1 of the Temporary Framework.
- (38) The measure fulfils the criteria set out in paragraph 22 of the Temporary Framework, in particular:
- Aid granted under the measure does not exceed EUR 740 000 per undertaking, which is below the EUR 800 000 threshold set out in paragraph 22(a) of the Temporary Framework.

- The aid is granted on the basis of the measure, with an estimated budget of ISK 1 billion and a maximum budget of ISK 2 billion. Therefore, the measure complies with the condition in paragraph 22(b) of the Temporary Framework.
- The notified aid may not be granted to undertakings that were already in difficulty (within the meaning of the GBER) on 31 December 2019, which complies with paragraph 22(c) of the Temporary Framework, unless the undertakings are micro or small enterprises and meet the conditions of paragraph 22(c)(bis) of the Temporary Framework.
- The aid will be granted no later than 30 June 2021, in compliance with the condition set out in paragraph 22(d) of the Temporary Framework.

- (39) In addition, the Icelandic authorities have confirmed that all applicable rules on cumulation will be respected.
- (40) ESA therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of an EEA EFTA State and that the requirements laid down in Section 3.1 of the Temporary Framework are complied with.

6.3 Reporting and monitoring

- (41) The Icelandic authorities have committed to comply with the monitoring and reporting provisions in Section 4 of the Temporary Framework. Information on combined aid to individual undertakings will be published on the centralised state aid transparency website.²⁰
- (42) It will be ensured that detailed records regarding the granting of aid under the measure are maintained for least 10 years. Such records, which will contain all information necessary to establish that the conditions of the Temporary Framework and other conditions herein have been observed, will be provided to ESA upon request.
- (43) Therefore, ESA concludes that the measure complies with the requirements of the Temporary Framework.

7 Conclusion

- (44) On the basis of the foregoing assessment, ESA considers that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. Since no doubts are raised that this aid is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(b), ESA has no objections to the implementation of the measure.
- (45) The Icelandic authorities have confirmed that the notification does not contain any business secrets or other information that should not be published.

For the EFTA Surveillance Authority,

Yours faithfully,

²⁰ See <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

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*This document has been electronically authenticated by Bente Angell-Hansen,
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