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Decision No 129/20/COL

Ministry of Finance and Economic Affairs  
Arnarhvoli  
101 Reykjavík  
Iceland

**Subject: COVID-19 Income loss grants**

## 1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform the Icelandic authorities that, having assessed the grant scheme for undertakings faced with income losses due to 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 objections<sup>1</sup> 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.<sup>2</sup>

## 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”),<sup>3</sup> the COVID-19 outbreak has caused a major shock to global and national economies. The containment measures adopted by the Icelandic Government and other national authorities, 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 in Iceland has slowed down significantly. Restrictions on large gatherings, a requirement for a minimum distance between persons and the outright prohibition on providing services requiring close proximity between people have had significant effect in this respect. Thousands of people have been quarantined, and

<sup>1</sup> 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.

<sup>2</sup> Documents No 1161890, No 1161892 and No 1161894.

<sup>3</sup> 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.

people are generally instructed to stay home, if possible. The restrictions, combined with subdued demand, have led many businesses to close operations temporarily.

- (5) On 21 March 2020, the Icelandic Government introduced a plan to address the economic effects of COVID-19. On 21 April 2020, the Government introduced further measures to address the economic effects of COVID-19. Several additional general economic measures and state aid measures have also been introduced during the summer and autumn of 2020. The measure at issue in this decision is one of the measures introduced by the Government to address the economic effects of COVID-19.

### 3.2 Objective

- (6) 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 COVID-19 outbreak and measures imposed to fight the spreading of the virus.

### 3.3 National legal basis

- (7) The legal basis for the measure is the Act on aid for undertakings faced with income losses due to the coronavirus pandemic (i. *lög um tekjufallsstyrki*) (“Act on income grants”).<sup>4</sup>

### 3.4 Granting authority and the administration of the measure

- (8) 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

- (9) 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. The scheme does not have sector limitations. Beneficiaries must be registered as an employer pursuant to Article 5 of Act No 45/1987 on the Withholding of Public Levies at Source.<sup>5</sup> Moreover, the beneficiaries must as a general rule have been established by 1 April 2020, and they must have unlimited tax liability in Iceland in accordance with Articles 1 or 2 of Act No 90/2003 on Income Tax (Act on Income Tax).<sup>6</sup> As described below, special conditions apply to undertakings that launched their business after 1 April 2020.
- (10) The conditions for receiving grants under the scheme are as follows:
- The loss of income for the period of 1 April 2020 until 31 October 2020 amounts to at least 40% of the average income of a seven-month period in 2019, and the decline in income is due to the COVID-19 outbreak or governmental measures taken to prevent its spreading. If the undertaking launched its business after 1 April 2019, its income should be compared to the income for the first full seven calendar months of operation, or, if it has operated for a shorter period at the end of March 2020 the income shall be converted for the time it has operated until the end of March 2020 into a

<sup>4</sup> Available online at: <https://www.althingi.is/alttext/151/s/0289.html>.

<sup>5</sup> Available online at: <https://www.althingi.is/lagas/nuna/1987045.html>.

<sup>6</sup> Available online at: <https://www.althingi.is/lagas/nuna/2003090.html>.

214-day average income. Under special circumstances, another reference period can be used if the undertaking can demonstrate that it better reflects its decline in income than the aforementioned methods. This method would only be applicable under special circumstances, e.g. in the case of a self-employed party that has been on a maternity leave or sick leave for the majority of 2019.<sup>7</sup> It is for the undertaking in question to demonstrate a different reference period and support with arguments that this period would better reflect its loss of income. If the undertaking has received a compensation for mandatory closure or halt of business according to Act No 38/2020 on financial backing for undertakings due to the coronavirus pandemic (i. lög um fjárstuðning til minni rekstraraðila vegna heimsfaraldurs kórónuveiru)<sup>8</sup> the undertaking can deduct that grant from its income for the relevant period when calculating the decline in income, provided the grant has been entered as income within the period of 1 April to 31 October 2020.

- The undertaking does not owe public duties or taxes for the last three years.
- The undertaking cannot have been in difficulty on 31 December 2019 in the meaning of Article 2(18) of the General Block Exemption Regulation (“[GBER](#)”),<sup>9</sup> but beneficiaries may have entered into such difficulty thereafter as a result of the COVID-19 outbreak. However, the limitation does not apply to small or micro undertakings that have not already received aid with financial restructuring.
- The undertaking has not been put into liquidation or bankruptcy.

(11) Undertakings that launched their business in the period from 1 April 2020 until 31 August 2020 are also eligible for the compensation for the period from 1 September 2020 until 31 October 2020. However, they must demonstrate that their loss of income during this period is at least 40% compared to their income during the period from the launch of its business until 1 September 2020 converted to a 61-day average income.

(12) Public entities, regional partnership companies (i. byggðasamlög) and publicly owned undertakings are excluded from receiving grants.

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

(13) The aid is in the form of direct grants. The grants constitute taxable income in accordance with the Act on Income Tax.

<sup>7</sup> See the [Parliament Committee Report](#).

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

<sup>9</sup> 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.

- (14) The grant amount for each beneficiary is based on the loss of income, as well as its operational cost and the number of employees. The grants will therefore be equal to the undertaking's operational cost excluding write-down and depreciation of assets, within the meaning of Article 31 of the Act on Income Tax,<sup>10</sup> but may not exceed the amount of the loss in income, and may not exceed ISK 400 000 per monthly full-time equivalent (i. *stöðugildi*) (FTE) if the loss in income was 40 to 70%, or ISK 500 000 per monthly FTE given a higher loss in income.
- (15) The maximum amount per undertaking is ISK 2 million per month (approx. EUR 12 300) when loss in income is 40 to 70%, and ISK 2.5 million per month (approx. EUR 15 400) when loss in income is higher. In practice, this means that a beneficiary with a loss of income of 40 to 70% can receive ISK 14 million in total, and a beneficiary with a higher loss of income can receive ISK 17.5 million in total. However, if an undertaking is composed of several connected entities (linked enterprises) then the maximum total aid amount is ISK 120 million (approx. EUR 740 000).<sup>11</sup>
- (16) 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](#).<sup>12</sup>
- (17) The Icelandic authorities confirm that aid granted under the measure may be cumulated with *de minimis* aid, provided that the relevant conditions of the *de minimis* Regulation are respected. It may also be cumulated with aid granted under the GBER, provided that conditions of the relevant GBER provisions are respected.

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<sup>10</sup> 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."

<sup>11</sup> 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.

<sup>12</sup> 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.

- (18) To the extent that aid under different sections of the Temporary Framework is granted to the same undertakings, the relevant provisions on cumulation in the Temporary Framework shall be respected.

### **3.7 Budget and duration**

- (19) The measure has been allocated an estimated budget of ISK 23.3 billion (approx. EUR 143 million). The compensation period is from 1 April 2020 to 31 October 2020. The measure enters into force on 6 November 2020. The scheme will be in force until 1 May 2021. No aid will be granted after 30 June 2021.

## **4 Presence of state aid**

- (20) 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.”
- (21) 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.
- (22) 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.
- (23) 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 that have experienced a certain loss of income and have employees, or are self-employed.
- (24) 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.
- (25) 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. The Icelandic authorities do not contest this conclusion.

## **5 Procedural requirements**

- (26) 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.”

- (27) The Icelandic authorities have notified the measure and have not let it 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**

- (28) 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”.
- (29) 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.
- (30) In the context of the current COVID-19 outbreak, the Commission adopted the Temporary Framework that sets out temporary state aid measures that it considers 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 effects 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.
- (31) 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**

- (32) 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.
- (33) Under 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.

- (34) 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 23.3 billion. Therefore, the measure complies with the condition in paragraph 22(b) of the Temporary Framework.
  - The notified aid cannot 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 1 May 2021, which is before the compulsory end point of 30 June 2021, as set out in paragraph 22(d) of the Temporary Framework.
- (35) In addition, the Icelandic authorities have confirmed that all applicable rules on cumulation will be respected.
- (36) 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**

- (37) 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.<sup>13</sup>
- (38) 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.
- (39) Therefore, ESA concludes that the measure complies with the requirements of the Temporary Framework.

## **7 Conclusion**

- (40) 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.
- (41) The Icelandic authorities have confirmed that the notification does not contain any business secrets or other information that should not be published.

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<sup>13</sup> See <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

For the EFTA Surveillance Authority,

Yours faithfully,

Bente Angell-Hansen  
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Frank J. Büchel  
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For Carsten Zatschler  
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*This document has been electronically authenticated by Bente Angell-Hansen,  
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