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Ministry of Trade, Industry and Fisheries
PO Box 8090 Dep
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Norway

**Subject: COVID-19 3rd amendment and prolongation of the
guarantee scheme for airlines**

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the notified amendment and prolongation of the COVID-19 Guarantee scheme for airlines (“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 Norwegian authorities notified the measure on 20 November 2020.²

3 Description of the measure

3.1 The existing scheme

- (3) By [Decision No 029/20/COL](#) of 30 March 2020 (“the Approval Decision”), ESA approved a scheme aiming to remedy a serious disturbance in the airline industry, and the resulting liquidity shortage, by means of state guarantees. By [Decision No 089/20/COL](#) of 10 July 2020 (“the Renewal Decision”), ESA approved a renewal with one amendment, namely the introduction of an alternative to the loss distribution requirement in paragraph 25(f) of the [Temporary Framework](#) for state aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework”).³ The assessment in the Renewal Decision was based on the general compatibility criteria under Article 61(3)(b) of the EEA Agreement, but drew on the Temporary Framework where appropriate. In the following, this scheme will be referred to as “the existing scheme”.
- (4) By [Decision No 118/20/COL](#) of 15 October 2020 (“the Prolongation Decision”), the existing scheme, as approved in the Renewal Decision, was prolonged until 31 December 2020.

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 Document Nos 1164295 and 1164293.

³ Communication from the Commission – Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak of 19.3.2020 (OJ C 91, 20.3.2020, p. 1) amended four times: 3.4.2020 (OJ C 112, 4.4.2020, p. 1), 8.5.2020 (OJ C 164, 13.5.2020, p. 3), 29.6.2020 (OJ C 218, 2.7.2020, p. 3) and on 13.10.2020 (OJ C 340, 13.10.2020, p. 1).

- (5) The objective of the existing scheme is to remedy the serious disturbance in the airline industry and the resulting liquidity shortage, caused by the restrictions adopted by the Norwegian authorities, as well as by other EEA States in the context of the COVID-19 outbreak.

3.2 Continued fallout from COVID-19

- (6) The COVID-19 outbreak continues to have more severe long-term repercussions for the airline industry than previously anticipated by the Norwegian authorities. In recent days and weeks, a new wave of the virus has been spreading across Europe and Norway. As a result, Norway, like many other European States, has imposed new measures and restrictions to contain the outbreak, effectively limiting travel, resulting in continued uncertainty for the airline sector and its customers.⁴ The Norwegian authorities now project that the preventative measures and restrictions will be in force for a considerable time and will last until late 2021 at a minimum.
- (7) Further, the Norwegian Government and the Norwegian Institute of Public Health continue to advise against all non-essential travel to other countries.⁵ That, together with the fact that the authorities have re-imposed travel restrictions and quarantine measures on short notice, in order to combat the spread of the virus, means there is considerable uncertainty as to the future of airline services. Currently, people arriving in Norway from almost all countries have to quarantine for ten days. In addition, people arriving from countries that do not meet certain infection levels must present a certificate of negative results of a COVID-19 test when they arrive in Norway and the test must be taken less than 72 hours before entry.⁶
- (8) The decline in travel, as a consequence of the restrictions and preventative health measures, puts tremendous pressure on airlines' liquidity and overall financial situation. While the effects of the coronavirus outbreak continue to unfold, there is no functioning market for airline services and the situation has resulted in dismissals of several hundred pilots and even more ground personnel. While the Norwegian airlines in the spring of this year estimated a return to normal business during the autumn of 2020, the airlines are now more pessimistic. The situation also implies that airlines' liquidity needs will last longer than first anticipated.

3.3 The notified prolongation and amendment

- (9) With reference to the above, the Norwegian authorities consider that it is necessary (i) to prolong the period during which airlines can be granted guarantees until 30 June 2021; and (ii) to increase the maximum guarantee period (and thus the duration of the underlying loan) to three years for undertakings that are granted guarantees under the scheme. This will ensure that more airlines

⁴ See a summary of newly enacted national measures that came into force in Norway on 28 October 2020: <https://www.regjeringen.no/no/aktuelt/nye-nasjonale-innstramminger/id2776995/>; and a list of preventive health measures, last updated on 5 November 2020: <https://www.regjeringen.no/no/aktuelt/-hold-dere-hjemme-ha-minst-mulig-sosial-kontakt/id2783763/>.

⁵ See: https://www.regjeringen.no/en/topics/foreign-affairs/reiseinformasjon/travel_coronavirus/id2691821/; Norwegian Institute of Public health: <https://www.fhi.no/en/op/novel-coronavirus-facts-advice/facts-and-general-advice/travel-advice-COVID19/>.

⁶ See: <https://www.fhi.no/en/op/novel-coronavirus-facts-advice/facts-and-general-advice/travel-advice-COVID19/>

have access to financing and reduce the severe liquidity strain faced by airlines because of the pandemic. Overall, the measure pursues the same objective as the existing scheme.

- (10) The Norwegian authorities submit that the measure is compatible with Article 61(3)(b) of the EEA Agreement, based on the reasoning set out in the Approval Decision and the Renewal Decision. The notified prolongation remains within the time-limit under the Temporary Framework, in particular paragraph 25(c), and the notified amendment remains within the time-limits under the Temporary Framework, in particular paragraph 25(f). According to the Norwegian authorities, extending the duration of the guarantee will not affect the assessment of whether the aid is appropriate, necessary and proportionate, in order to reach the objective of remedying the serious disturbance to the economy caused by the COVID-19 outbreak and the airline industry in particular.
- (11) Guarantee premiums will be calculated in the same way and will remain the same as under the existing scheme. As set out in the Approval Decision and the Renewal Decision, the Norwegian Export Credit Guarantee Agency (“GIEK”) operates with a COVID-19 guarantee premium of 2% under the guarantee scheme. The 2% premium is set out in the letter of assignment from the Ministry of Trade, Industry and Fisheries (“the Ministry”), and GIEK would have to apply to the Ministry to have the COVID-19 premium changed, if they want to offer guarantees at different rates while the crisis is ongoing. The COVID-19 guarantee premium of 2% exceeds the minimum interest rates set out in paragraph 25(a) of the Temporary Framework. In addition, the airlines will be charged a credit margin by any commercial lenders. The Norwegian authorities consider it highly unlikely that the credit margin by commercial lenders, together with the guarantee premium set by GIEK, will fall below the minimum interest rates set out in paragraph 27 of the Temporary Framework.
- (12) The prolongation of the guarantee period will apply for both new and existing lenders/operators with a Norwegian air operator’s certificate (“AOC”). This ensures that all airlines operating under a Norwegian AOC are treated equally and that the COVID-19 guarantee scheme for airlines will continue to function in a non-discriminatory manner.
- (13) Finally, the Norwegian authorities argue that the measure is vital to ensure the continued provision of airline services in the aftermath of the COVID-19 outbreak.

3.4 National legal basis

- (14) The Norwegian Government will submit a proposal to Parliament to extend the guarantee period and prolong the existing scheme. Once approved, the national legal basis for the measure will be the Parliament’s Decision authorising this extension and prolongation.

3.5 Duration

- (15) The measure prolongs the existing scheme with the notified amendment until 30 June 2021.

3.6 Transparency, reporting and monitoring

- (16) The Norwegian authorities commit to continue to comply with the monitoring and reporting obligations in Section 4 of the Temporary Framework and ensure transparency in line with the Approval Decision.

4 Presence of state aid

- (17) 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.”
- (18) The qualification of a measure as aid within the meaning of this provision 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.
- (19) ESA has found that the existing scheme constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. There is nothing in the measure which alters this conclusion. In light of that assessment, ESA concludes that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

5 Procedural requirements

- (20) 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.”
- (21) The Norwegian authorities have notified the measure and yet to let it enter into force. The Norwegian authorities have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

6 Compatibility of the measure

- (22) 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 EFTA State”.
- (23) 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.
- (24) In order to ensure uniform application of the state aid rules throughout the EEA, 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 State under Article 61(3)(b) in the context of the COVID-19 outbreak.

- (25) The notified measure consists of an amendment to the existing scheme, namely the extension of the maximum duration of the state guarantees from two years to three years, along with a prolongation until 30 June 2021.
- (26) As stated in Section 3.1, the assessment of the existing scheme was based on the general compatibility criteria under Article 61(3)(b) of the EEA Agreement, but drew on the Temporary Framework where appropriate. Amongst the mechanisms that were assessed under the Temporary Framework were the duration of the scheme and the duration of the guarantees.
- (27) According to paragraph 25(f) of the Temporary Framework, public guarantees can have a maximum duration of up to six years. The measure therefore complies with the time-limits set out in the Temporary Framework. Further, as described in Section 3.3 above, the calculation of guarantee premiums will remain unaltered and is in line with the requirements set out in the Temporary Framework, which do not differentiate between guarantee premiums on the 2nd or 3rd year of the duration of the guaranteed loan, see paragraph 25(a) of the Temporary Framework.
- (28) The amendment to the existing scheme does not alter ESA's compatibility assessment, as laid out in the Approval Decision and the Renewal Decision, as the amendment remains within the time-limits set out in the Temporary Framework.
- (29) The prolongation is also justified. The challenges in the airline sector persist, as the sector faces another tightening of the containment measures in Norway and in Europe, including the re-introduction of travel restrictions and quarantine measures. The prolongation is further in line with paragraph 25(c) of the Temporary Framework, according to which guarantees can be granted until 30 June 2021.
- (30) Against this background, ESA considers that the measure does not affect the compatibility assessment of the existing scheme, as set out in the Approval Decision and subsequent Renewal and Prolongation Decisions.

7 Conclusion

- (31) 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.
- (32) The Norwegian authorities have confirmed that the notification does not contain confidential information.

For the EFTA Surveillance Authority,

Yours faithfully,

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