

Case No: 73992

Event No: 683287

Dec: 90/14/COL

## EFTA SURVEILLANCE AUTHORITY DECISION

of 26 February 2014

on the public financing of harbour infrastructure at Húsavík

(Iceland)

The EFTA Surveillance Authority (“the Authority”)

HAVING REGARD to the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Article 61(3) c) and Protocol 26 thereof,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“the Surveillance and Court Agreement”), in particular to Article 24,

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”), in particular to Article 4(3) of Part II,

HAVING REGARD to the consolidated version of the Authority’s Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 (“the Implementing Provisions Decision”)<sup>1</sup>,

Whereas:

### I. FACTS

#### 1. Procedure

- (1) By letter of 11 June 2013 (Event Nos 674920-674925), the Icelandic authorities notified their plans to grant aid for the construction of the Húsavík port infrastructure in the Bakki area that belongs to the municipality of Norðurþing at the North-East part of Iceland, pursuant to Article 1(3) of Part I of Protocol 3.

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<sup>1</sup> Available at: <http://www.eftasurv.int/media/decisions/195-04-COL.pdf>

- (2) By letter dated 2 August 2013, the Authority requested additional information (Event No 678781). The Icelandic authorities replied to the information request by letter dated 30 August 2013 (Event Nos 681871-681883). Additional information was received between October 2013 and February 2014. The Authority thus considered the notification as complete on 11 February 2014.

## **2. Description of the proposed measures**

### **2.1 Description and objective**

- (1) The overall objective of the notified measure is to expand and improve the existing Húsavík harbour infrastructure in the area of Bakki.<sup>2</sup> The measure consists in investments for a total amount of ISK 969 million in the form of an equity injection, a subordinated loan and a loan, all granted either by the Norðurþing municipality and/or the State Treasury, to the Norðurþing Harbour fund (the “Harbour fund”), the beneficiary of the aid and the manager of the harbour.
- (2) The following notified investments are planned in the Outer Harbour<sup>3</sup>:
- Expand the pier Bökubakki by 90m, reaching 220m length and 12m design depth;
  - Dredging the turning space and access points for 160m long vessels with a 9m draught; and
  - Dredging to and at Norðurgarður so that 120m long vessels with an up to 7.5m dredge can be accommodated.
- (3) In addition, the Icelandic Government and the Norðurþing municipality have signed an Investment Agreement with PCC SE, a German corporation, and PCC BakkiSilicon hf., an Icelandic public liability company, for the construction and operation by the latter of a silicon metal plant in the industrial site at Bakki to produce up to 33.000 tons of silicon metal per year. A Site Agreement, for the lease of the land, as well as a Harbour Agreement for the use of the harbour facilities, have been also concluded. These measures however are dealt with by the Authority in a separate investigation.<sup>4</sup>
- (4) The notified measure aims at developing the North Eastern area of the country and support the expansion of the energy intensive industry in the area.

### **2.2 Financing of the aid**

- (5) The total cost of the construction of the harbour infrastructure is estimated at ISK 969 million.
- (6) The breakdown of the total cost and the duration have been explained by the Icelandic authorities as follows:

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<sup>2</sup> See Annex I for the Harbour area map.

<sup>3</sup> As defined on the site map in Annex B to the Harbour Agreement (See Annex II).

<sup>4</sup> Case 74081.

*Table 1 – The cost of the investment project at 2012 price levels*

<b>Project segment</b>	<b>Cost ISK million</b>	<b>Project duration</b>
<b><i>Infrastructure</i></b>		
Preparation, research	40	6-12 months
Extension of pier Bökubakki	300	2 years
Dredging at Bökubakki	290	6 months
Dredging at Norðurgarður	200	6 months
Harbour area	139	1 year
<b>Total</b>	<b>969</b>	

- (7) The harbour construction is expected to commence in 2014 and it is estimated to be completed in 2 to 2,5 years, including preparation (started in 2013). The selection of the construction companies will be carried out in accordance with the public procurement rules of the EEA Agreement and national law in a public, open and non-discriminatory tender process. The investments described above will be financed as follows:
- a) The Norðurþing municipality, as owner of the Húsavík harbour, will provide the Harbour fund, the beneficiary of the aid, with ISK 137 million in equity;
  - b) The State Treasury will contribute ISK 423 million to the Harbour fund in the form of a zero interest, index adjusted, subordinated loan with 25 years maturity;
  - c) The Norðurþing municipality intends to obtain a loan from the Municipality Credit Iceland Plc, a statutory limited liability company, in the amount of ISK 409 million (the “MCI loan”). This amount will be transferred to the Harbour fund with 5,25per cent interest and 15 years maturity.<sup>5</sup>
- (8) The Icelandic authorities have explained that the construction will be funded over a three-year period as demonstrated in the table below:

*Table 2: Financing in million ISK*


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<sup>5</sup> The MCI loan is expected to be granted at a later stage, and the Authority’s assessment is based on written confirmation sent by the Icelandic authorities as regards the terms of the loan.

Financing source	Sum ISK	Share	2014	2015	2016	NPV
Harbour Fund's equity	137	13%	58	40	39	113
Subordinated loan	423	44%	180	123	120	348
MCI loan	409	42%	174	119	116	336
	<b>969</b>	<b>100%</b>	<b>412</b>	<b>282</b>	<b>275</b>	<b>797</b>

### 2.3 The aid recipient

- (9) The harbour is managed by the Harbour fund, which is the direct aid beneficiary. The owner of the fund is Norðurþing municipality and the management of the fund lies in the hands of the executive board of the Harbour fund (the “Harbour Authority”).
- (10) According to the Icelandic Act on Harbours No. 61/2003, the Norðurþing Town Council is in charge of harbour related issues. The Harbour Authority has been appointed by the Town Council to carry out the following tasks and responsibilities:
- It manages the finances, operations maintenance and new constructions of the harbour. The board shall also obtain approval from the Town Council regarding the budget plan and borrowings;
  - It manages the facilities including the renting out of accommodation and land;
  - It grants permits for operations in the harbour area, as well as prohibits or limits the use of the area for operations that it considers as making ordinary port activities difficult;
  - It determines the level of the tariffs for the use of the harbour taking into account that the fees paid cover the operations of the harbour including the cost of capital, depreciation, maintenance, construction and investment under long term investment plan;
  - It makes proposals to the Town Council concerning planning matters in the harbour area. Any construction in the harbour area shall be dealt with by the Planning and Building Committee and the Icelandic Transport Authority before being submitted to the Town Council.
- (11) The Harbour fund charges wharfage fees and excise duties of vessels' cargo and the transport of ferry vessels, according to set tariffs. It is also authorised to grant a discount on wharfage fees or an exemption from excise duties for specific products. Other income derives from catch and annual fees, cruise ships, weighing fees, quay tariffs, facility charge for whale watching, waste charges and other operating expenses.

### 2.4 National legal basis for the aid measure

- (12) The legal basis for granting aid to the above mentioned investment plans is Act No. 41/2013 authorising the minister, on behalf of the Treasury, to finance infrastructure

development in connection with commercial activities on the property of Bakki in Norðurþing.<sup>6</sup>

## 2.5 Profitability assessment

- (13) The Icelandic authorities have submitted a profitability assessment conducted by Professor Páll Jensson showing that the free cash flow of the harbour project has a negative net present value of -772 million ISK over a 40 year period, and that net revenues derived from operations during the whole period are not sufficient for the Harbour fund to cover both operation and investment costs. The estimated revenues and costs are converted to present value terms (for 2013) at a discount rate of 5.75 percent.
- (14) It is the view of the Icelandic authorities that, based on the above assumptions, the Harbour fund can only sustain its operations and payments with the financial support of the State. Furthermore, it will not be able to pay off its financial obligation to the State, (i.e. the subordinated loan) since the harbour will be operated at a loss over the 40 year period, unless PCC BakkiSilicon hf. expands its operations or other industrial companies commence operations at the Bakki site.
- (15) The Icelandic authorities have also submitted financial projections for a 3-year investment and a 25-year operation period using the Authority's reference rate for Iceland of 7.14 percent (i.e. the base rate for Iceland increased by a fixed margin of 100 basis points).<sup>7</sup> These projections calculate a funding gap equal to the net present value (NPV) of the harbour project at around -562 million ISK.<sup>8</sup> The Icelandic authorities have estimated the NPV of the aid granted in the project to amount to 525 million ISK, providing thus a funding gap ratio of approximately 93.5 percent. The NPV of the eligible investment costs is estimated at 797 million ISK. That corresponds to an aid intensity of 65.9 percent.

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<sup>6</sup> Lög um heimild til handa ráðherra, f.h. ríkissjóðs, til að fjármagna uppbyggingu innviða vegna atvinnustarfsemi í landi Bakka í Norðurþingi, nr. 41/2003, <http://althingi.is/lagas/nuna/2013041.html>.

<sup>7</sup> Available at [www.eftasurv.int/state-aid/rates](http://www.eftasurv.int/state-aid/rates).

<sup>8</sup> The funding gap is the difference between the net present value of the investment costs and the net present value of the revenues over a specific reference period.

*Table 3: Calculation of aid elements and aid intensity in millions ISK*

<b>Aid measures</b>	<b>Sum ISK</b>	<b>NPV</b>
Harbour Fund's equity	137	113
Subordinated loan	423	348
Difference (Market loan - MCI loan)	115	64
<b>Estimated aid</b>	<b>675</b>	<b>525</b>
<b>Eligible investment costs</b>	<b>969</b>	<b>797</b>
<b>Aid intensity</b>		<b>65.9%</b>

- (16) The Icelandic authorities have also submitted information concerning the repayment of the subordinated loan should the harbour activities become profitable. If so, the Harbour fund has committed to repay the State Treasury the excess profit at a level equal to the aid intensity of the project (see more details at Section 3.2 below).

## II. ASSESSMENT

### 1. The presence of state aid

#### 1.1 State aid within the meaning of Article 61(1) of the EEA Agreement

(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) In the following, the Authority will assess whether the criteria of Article 61(1) of the EEA Agreement are fulfilled.

#### 1.2 The notion of undertaking

(19) The recipients of aid must be undertakings. The concept of an undertaking is not defined in the EU Treaty or the EEA Agreement. However, established jurisprudence by the EU courts defines it as any natural or legal persons engaging in economic activities, regardless of legal status and means by which it is financed.<sup>9</sup>

(20) The notified measure covers the construction of infrastructure at Húsavík harbour. The Union courts have recently held that, for the construction of infrastructure to be characterised as an economic activity, an assessment must be made as to whether such activity can or cannot be dissociated from the operation of the infrastructure itself, which must constitute an economic activity.<sup>10</sup>

(21) It must therefore be established firstly whether the operation of harbour constitutes an economic activity and, secondly, whether the construction of the infrastructure can or cannot be dissociated from the operation of such harbour.

(22) Firstly, the operation of the harbour relates to the importation and exportation of tradable products and services, which means that the harbour is commercially exploited. This has been confirmed by the European Commission which held that the operation of harbours amounts to an economic activity.<sup>11</sup>

(23) Secondly, it is also clear from the facts provided by the Icelandic Authorities that the construction of the infrastructure cannot be dissociated from the operation of the harbour. The expansion and dredging activities planned for the pier Bökubakki, as well as the

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<sup>9</sup> Case C-41/90, *Höfner and Elser*, [1991] ECR I-1979, paragraph 21; Case C-35/96, *Commission v Italy*, [1998] ECR I-3851, paragraph 36.

<sup>10</sup> Case C-288/11 P, *Leipzig-Halle GmbH v Commission*, (not yet reported), paragraph 44; Cases T-443/08 and T-455/08, *Freistaat Sachsen and others v Commission*, [2011] ECR II-1311, paragraph 95.

<sup>11</sup> Commission Decisions N520/2003 – Financial support for infrastructure works in Flemish posts; N 60/2006 – Project main port development Rotterdam; SA 30742 – Lithuania – Construction for the Passenger and Cargo Ferries Terminal in Klaipėda.

dredging to and at Norðurgarður are all directly related to the activities of the harbour, which will be operated on a commercial basis by the Harbour fund.

- (24) It can therefore be concluded that the construction of the infrastructure amounts to an economic activity. As a consequence, the Harbour fund, the operator of the harbour and beneficiary of the aid, is engaged in an economic activity and is considered to be an undertaking.

### **1.3 Presence of State resources**

- (25) The funding of the measure (i.e. the equity injection, the subordinated loan and the MCI loan) is granted by the Norðurþing municipality and/or the State Treasury. State resources are thus involved.

### **1.4 Favouring certain undertakings or the production of certain goods**

- (26) The aid measure must confer on the aid beneficiary advantages that relieve it of charges that are normally borne from its budget.
- (27) The assessment must be done at two levels: at the level of the Harbour fund, as the operator of the harbour, and at the level of the users of the harbour infrastructure.
- (28) At the level of the Harbour fund, the Authority has first to assess whether the investment of the State in the harbour infrastructure satisfies the market economy investor principle, even though the Icelandic authorities did not claim that the market economy investor principle was satisfied in this case.
- (29) Concerning the equity financing, the Authority must examine whether the investment will yield a rate of return that would be acceptable to a private investor. As presented in paragraph (15), the financial data show that the harbour project has a negative NPV over a 25 year period, meaning that the net revenues are not sufficient for the Harbour fund to cover the operation and investment costs, taking into account revenues stemming from the activity of PCC BakkiSilicon hf. Given the results of the financial analysis provided by the Icelandic authorities, and assessed by the Authority, it must be concluded that the equity investment would not have been undertaken by a private investor, and the amount of 113 million ISK at NPV must thus be considered as providing an advantage to the Harbour fund.
- (30) As regards the subordinated loan granted by the State Treasury at zero interest with a maturity of 25 years, it is highly unlikely that a private investor would accept such terms, in particular given the negative financial projections, as described in paragraph (15). Moreover, the Icelandic authorities have explained that the Harbour fund will not pay back the principal of the loan either, unless the financial situation of the Harbour fund improves significantly and profits are generated from the operation of the harbour. It must therefore be concluded that the subordinated loan would not have been offered to the Harbour Fund under similar terms by a private investor, and the amount of 348 million ISK at NPV must also be considered as providing an advantage to the Harbour fund.

- (31) Concerning the MCI loan to be obtained by the Norðurþing municipality and transferred to the Harbour fund, this is granted by the Municipality Credit Iceland Plc. The interest rate is 5.25 percent and the loan is to be paid back within 15 years from draw down date.
- (32) On the basis of the Authority's Rules regarding applicable rates, the Authority makes use of reference rates that serve as a proxy for market interest rates in order to measure the cash grant equivalent of aid. For Iceland, the base reference rate was 6.14 percent for year 2013.
- (33) Depending on the rating of the undertaking and the collateral offered, margins are added to this base rate in order to determine an appropriate market rate proxy for the particular aid element. Normally, 100 basis points are added for: (i) loans to undertakings with satisfactory rating and high collateral or (ii) loans with good rating and normal collateral.
- (34) The Authority has not received any adequate information as regards the credit rating of the Harbour fund, nor concerning collateral for the MCI loan. The Icelandic authorities have applied 220 basis points on top of the base rate in their aid calculation. They have stated that this margin would correspond to a satisfactory (BB) rating, given the strong structural links that the Harbour fund has with the Norðurþing municipality, and the fact that the municipality could pledge its assets in the Harbour fund as collateral.
- (35) In the absence of further evidence, the Authority notes that an advantage is granted to the Harbour fund equal to the difference between a market loan with reference rate 6.14 percent plus 220 basis point (in sum 8.34 percent) and the MCI loan with 5.25 percent interest rate. As such, the amount of 64 million ISK at NPV must be considered as conferring an advantage to the Harbour fund.
- (36) Therefore, the Authority concludes that the State does not behave as a private investor, and the public financing, as described above confers an advantage to the Harbour fund equal to a NPV of 525 million ISK.
- (37) As the public financing is granted specifically to the Harbour fund, the measure is selective.
- (38) Applying a similar test at the level of the users, the Icelandic authorities submitted that all potential users, i.e. shipping companies and industrial companies, will have equal, non-discriminatory access to the harbour infrastructure. Therefore, Article 61(1) of the EEA Agreement shall not apply since no advantage is granted to any specific undertaking or group of undertakings.
- (39) The Authority partly agrees with the Icelandic authorities that no aid exists at the level of the users.
- (40) Shipping companies, such as cruise ships or whale watching ships, will pay the same fees for the use of the harbour facilities. Thus, at this stage, the Authority concludes that no state aid exists for the shipping companies using the harbour.

- (41) As regards the industrial users, although the Icelandic authorities have reported that there would be open and non-discriminatory access to the harbour facilities, it appears that this is not the case with PCC BakkiSilicon hf., which is the first company to establish itself at the industrial site at Bakki.
- (42) The Authority notes that, based on Article 5.4 of the Harbour Agreement signed between the Harbour fund and PCC BakkiSilicon hf., the latter will have the exclusive usage of at least 500m<sup>2</sup> in the Outer Harbour for storage purposes. This usage appears to be without any remuneration from the company.
- (43) In addition, according to the same agreement, PCC BakkiSilicon hf. shall receive a 40 per cent discount on wharfage fees from the applicable tariff rate at any given time, and for a period of maximum 14 years from the date of the signature of the Investment Agreement.
- (44) Given that the Authority is currently in the course of investigating separately the plans of the Icelandic authorities to grant regional investment aid by means of tax and fees concessions to PCC BakkiSilicon hf, the said measures will be assessed under that investigation accordingly.
- (45) Concerning the potential industrial users of the harbour, the Authority therefore concludes that the harbour is open to all users on a non- discriminatory basis. This is, however, without prejudice to the outcome of the separate investigation carried out by the Authority into the potential aid measures to PCC BakkiSilicon hf.

### **1.5 Distortion of competition and affect on trade between EEA States**

- (46) Although, as the Icelandic authorities submitted, the harbour will be operated at a loss, this does not negate the fact that the aid measure granted to the Harbour fund strengthens its position compared with other undertakings competing in the same market.
- (47) The expansion of the Húsavík harbour infrastructure is planned to service vessels importing and exporting goods for the industrial activities at the Bakki area. It is expected that the harbour will service up to 1 million tons of goods annually.
- (48) The aid will also have an effect on the touristic activities of the harbour. The activities related to tourism (e.g. particularly cruise ships) are expected to benefit as a result of the expanded infrastructure. This will further strengthen the position of the Húsavík harbour vis-à-vis its competitors.
- (49) The measure therefore has the potential to distort competition and affect trade between the EEA States.

## **2. Procedural requirements**

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

- (51) By submitting a notification of the aid measure, the Icelandic authorities have complied with the notification requirement. Also, by not putting into effect the planned measure, the standstill obligation has been respected.
- (52) The Authority can therefore conclude that the Icelandic authorities have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

### **3. Compatibility of the aid**

- (53) In so far as the notified measure above constitutes State aid within the meaning of Article 61(1) of the EEA Agreement, its compatibility will be assessed under paragraph (3)(c) of that article that indicates that “*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*” may be considered to be compatible with the functioning of the EEA Agreement.
- (54) The Authority should therefore examine whether the notified measure meets a clearly defined objective of common interest, is necessary and proportional to this objective and does not affect trade to an extent contrary to the common interest.

#### **3.1 Objective of common interest**

- (55) According to the information submitted by the Icelandic authorities, the main objective behind the expansion of the infrastructure in the Húsavík harbour is the development of the North-eastern corner of Iceland through the development of an industrial site in the Bakki area next to the harbour.
- (56) The site selection is based on feasibility and regional perspectives taking into account factors such as geology and ecology, geographical conditions, archaeological remains, meteorological conditions, shipping routes, harbour facilities, power generation, transport of energy and public transport.
- (57) It has been submitted that other ports, such as Kópasker and Raufarhöfn, have considerably lesser capacity mostly servicing small fishing vessels and could not thus be capable of servicing the industrial site at Bakki.
- (58) It is expected that this expansion at the Húsavík harbour will attract power-intensive companies, as well as allow open access to all shipping companies. This, in turn, will allow the utilization of the energy resources that are available in the area, as well as, at the same time, creating employment prospects at Bakki, with the result of changing the demographic and society development in the area. Tourism is also expected to increase given that transportation to the Bakki area will be strengthened.
- (59) Finally, the harbour and the industrial projects are expected to contribute to growth development in terms of, for example, exports of goods and services. According to the basic forecast by Statistics Iceland (without the project), exports are expected to rise by 2.8 to 4.2 per cent annually. In 2016, when production of PCC BakkiSilicon hf. is projected to have commenced, exports are expected to rise by 4.4 per cent (compared to

3.9 per cent without the project) and by 2.9 per cent in 2017 (compared to 2.6 per cent without the project).

- (60) On the basis of the above, the Authority concludes that the project contributes to an objective of common interest. This is because the expansion of the harbour infrastructure will contribute to the development of the industrial site at Bakki and as a result benefit the general economy, facilitate regional development in terms of employment and economic coherence, whilst at the same time obtain full benefit from the utilisation of the infrastructure, as soon as the site is developed.

### **3.2 Necessity and proportionality of the aid measure**

- (61) The Authority notes that on the basis of the financial projections made by the Icelandic authorities as explained above in paragraph (15), the negative present value of the harbour project shows that the net revenues derived from the investment over a period of 25 years are not sufficient for the Harbour fund to recover the investment costs and cover its operational costs.
- (62) The Authority moreover considers that port infrastructure projects require considerable capital investment that can only be recovered in the very long term, and their economic viability may not normally be ensured without public funding.
- (63) The Icelandic authorities have submitted that, on the basis of the profitability assessment carried out, the Harbour fund will start paying instalments on its loan with the Norðurþing municipality at the time when the operations of PCC BakkiSilicon hf. commence. Also, it is not envisaged that the fund will make repayments of the subordinated loan before 2020, as the harbour will be running at a loss. It is evidenced, therefore, that private actors would not be interested in participating in such an investment.
- (64) The Authority further notes that, in accordance with Article 2 of the Act No. 41/2013, the authorisation to finance the infrastructure project shall not take effect before the Authority has given its consent. In addition, the construction works are planned to start in 2014, that is after the granting of the public funding.
- (65) Therefore, the public funding is necessary and has incentive effect, in so far as it enables the Harbour fund to undertake an investment project that could not have been realised without public support.
- (66) As regards proportionality, and whether the public funding is kept to the minimum necessary, it is noted that the funding gap ratio is 93.5 percent. However, it has to be underlined that the actual aid intensity is approximately 65.9 percent, reflecting the limited advantage stemming from the MCI loan by the Norðurþing municipality (i.e. the difference between a market loan and the MCI loan).
- (67) Further, the Authority notes that a Repayment Contract has been signed between the Harbour fund and the State Treasury according to which the Harbour fund commits to commence the repayment of the subordinated loan of the State Treasury as soon as profits are generated from the operation of the harbour. The Harbour fund may retain a

reasonable profit equal to its weighted average cost of capital, as calculated by the Icelandic authorities on an annual basis. Any profit beyond this level shall be used to repay the subordinated loan at a rate equal to the aid intensity of the project (i.e. 65.9 percent).

- (68) Moreover, the Harbour fund is obliged to submit to the State Treasury audited annual accounts, as well as any other information concerning the Harbour fund's financial position. This ensures that no undue advantage will accrue to the Harbour fund.
- (69) In addition, the fact that the selection of the construction companies will be carried out in accordance with Icelandic law and the public procurement rules of the EEA Agreement is a strong indication that the public financing is kept to the minimum necessary.
- (70) In light of the above and the monitoring process set up by the parties, the Authority concludes that the aid measure to the Harbour fund is necessary and proportional

### **3.3 Effect on trade contrary to the common interest**

- (71) In order for this measure to be compatible with the EEA Agreement, it must still be shown that the development of trade is not affected to an extent contrary to the common interest.
- (72) As a result of this State financing, the Harbour fund acquires infrastructure that would allow it to increase its harbour capacity (landing/loading) from 10.500 tons in 2010 to around 1 million tons from 2014 onwards depending on the size of vessels and the logistics. As part of this, the infrastructure and the development of the industrial site at Bakki will create new capacity for the harbour: as mentioned in paragraph (3), it is expected that around 33.000 tons of silicon metal will be exported annually from Húsavík harbour. This means that the Harbour fund will strengthen its position in relation to its competitors.
- (73) In view of the latest available data provided by the Icelandic authorities, in 2011, the share occupied by the Húsavík harbour in the national freight transport market was 0.09 per cent. As the project contemplates to transport 33.000 tons of silicon metal annually, it is estimated that its share will increase to around 0.6 per cent, following the completion of the project.
- (74) The nearest harbours capable of handling freight of similar capacity are located at a distance of 100km (Akureyri) and 300km (Reyðarfjörður) respectively. Given, however, the geographical location of Húsavík harbour, it appears to be physically difficult and therefore economically unprofitable, to transport such a large capacity through mountain roads that are often closed by snow.
- (75) The construction of the infrastructure and the increase in freight handling capacity are therefore unlikely to make Húsavík harbour a potential competitor to other neighbouring ports and affect freight handling trade in the EEA.
- (76) Tourism, and more particularly the cruise ships market, will also be affected by the construction of the infrastructure. However, in 2012 the market share occupied by the

Húsavík harbour in cruise traffic is 4 per cent (in terms of vessels' share), whereas approximately 96 per cent of cruise ships that visit Iceland berth in Reykjavík. As a result, it is very unlikely that the notified measure will allow Húsavík harbour to acquire a significant share in the relevant market.

- (77) Concerning the activity of whale watching, as reported by the Icelandic authorities, this is most important for Húsavík harbour, with a market share of 32 per cent in 2012, ranking it at second position in Iceland behind Reykjavík.<sup>12</sup> However, the Authority notes that the project will have a limited impact on such market: as a result of the project, the revenues acquired in general from touristic activities will represent only around 4 per cent of the harbour's total revenues. In addition, the funded infrastructure relates primarily to the industrial activities of the harbour, whereas the whale watching activities will continue being served by the existing infrastructure of the Inner harbour.<sup>13</sup> Thus, it does not appear that the harbour will increase its market share in the whale watching activities following the aid, and as a result any effect of the notified measure on the said touristic activities appears to be marginal.
- (78) In the light of the above, the Authority concludes that the notified measure does not affect trade to the extent contrary to the common interest.

#### **4. Conclusion**

- (79) On the basis of the foregoing assessment, and in particular in light of the commitments agreed between the parties concerning the repayment of the subordinated loan and the reporting obligations to be undertaken on a yearly basis by the Harbour fund, the Authority considers that the notified measure is compatible with the functioning of the EEA Agreement within the meaning of Article 61(3)(c) of the EEA Agreement, since it facilitates the development of the industrial site at Bakki and the Northeast corner of the country, and the aid does not affect trading conditions to an extent contrary to the common interest.

HAS ADOPTED THIS DECISION:

#### *Article 1*

The aid granted by the Norðurþing municipality and the State Treasury to the Norðurþing Harbour fund for the construction of port infrastructure at Húsavík harbour is compatible with the EEA Agreement .

#### *Article 2*

This Decision is addressed to Iceland.

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<sup>12</sup> Source: Icelandic Tourist Industry Association (2012).

<sup>13</sup> See Annex I.

*Article 3*

Only the English language version of this decision is authentic.

Done at Brussels, on 26 February 2014

*For the EFTA Surveillance Authority*

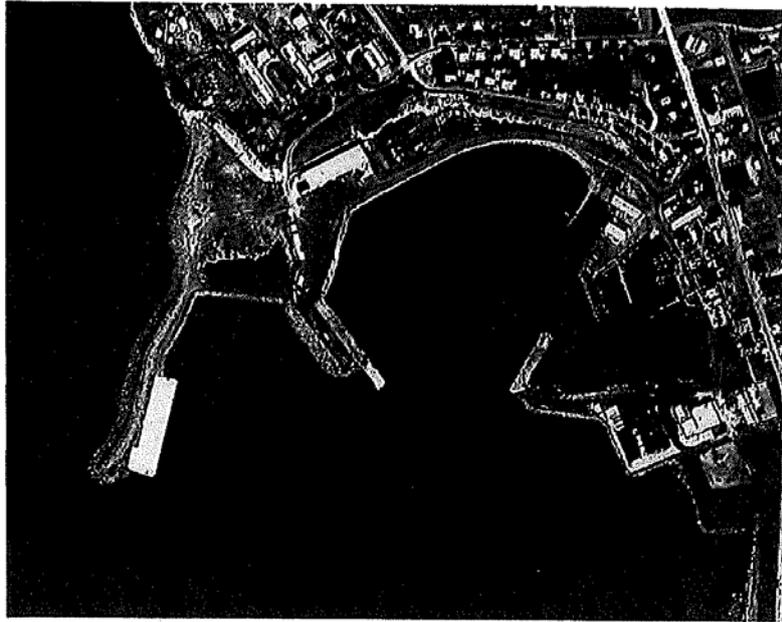
Oda Helen Sletnes  
*President*

Frank Büchel  
*College Member*

Annex I

Annex A  
to the Harbour Agreement

HARBOUR AREA MAP

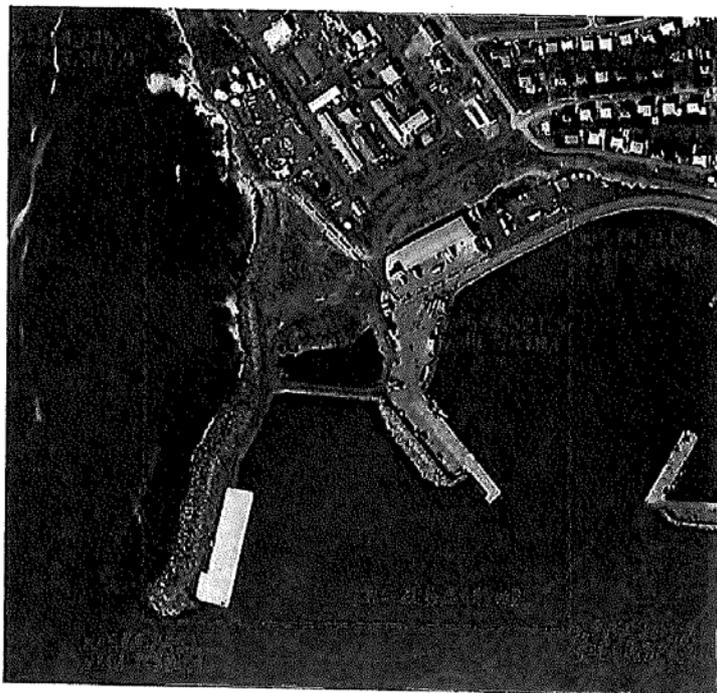


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Annex II

Annex B  
to the Harbour Agreement

OUTER HARBOUR MAP



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BGA  
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