

Doc. No: 03-7540-I
Ref. No: SAM 030.02007
Dec. No.: 246/03/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 3 December 2003

regarding the prolongation of supplementary insurance cover for third-party damage due to acts of war and terrorism ('war insurance') in support of Icelandic airline companies and cargo operators (covering the period from 1 June until 31 August 2002)

(ICELAND)

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area¹, in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice², in particular to Article 24 thereof and Article 1 in Part I of Protocol 3³ thereof,

HAVING REGARD TO the Procedural and Substantive Rules in the Field of State Aid⁴,

WHEREAS:

I. FACTS

1. Procedure

By Decision of 21 November 2001 (Dec. No. 361/01/COL), the Authority approved the temporary provision of 'war insurance' by the Icelandic State to Icelandic airline companies and cargo operators for a period of one month, from 24 September until 24

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

³ Protocol 3 to the Surveillance and Court Agreement as amended by the EFTA States on 10 December 2001. The amendments entered into force on 28 August 2003.

⁴ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231, EEA Supplements 03.09.94 No. 32, last amended by the Authority's Decision No 198/03/COL of 5 November 2003, not yet published, hereinafter referred to as the 'Authority's State Aid Guidelines'.

October 2001. In a second decision adopted 31 May 2002 (Dec. No. 89/02/COL) the Authority authorised the prolongation of the war insurance scheme for the period covering 24 October 2001 until 31 May 2002.

The Icelandic Government informed the Authority, by letter from the Ministry of Finance dated 31 May 2002, forwarded by the Icelandic Mission to the European Union on 5 June 2002, received and registered by the Authority on 6 June 2002 (Doc. No. 02-4254-A) of a prolongation, on existing terms, of the war insurance scheme covering the period from 1 June to 30 June 2002.

By letter dated the 19 June 2002 (Doc. No. 02-4633-D) the Authority acknowledged receipt of that letter and asked the Icelandic Government to forward to the Authority up-dated information on the premiums collected under the war insurance scheme as approved by the Authority in its Decision of 31 May 2002.

The Icelandic Government informed the Authority, by letter from the Ministry of Finance dated 1 July 2002, forwarded by the Icelandic Mission to the European Union on 8 July 2002, received and registered by the Authority on 9 July 2002 (Doc. No. 02-5234-A) of a further prolongation, on existing terms, of the war insurance scheme covering the period from 1 July 2002 to 31 August 2002.

By letter dated 4 September 2002, forwarded by the Icelandic Mission to the European Union on the same day, received and registered by the Authority 12 September 2002 (Doc. No. 02-6596-A) the Ministry of Finance informed the Authority that the Icelandic Government had decided to stop providing temporary third part insurance for Icelandic aircrafts, as of 1 September 2002, and consequently the war insurance scheme which was valid until 31 August 2002, would not be prolonged.

By letter dated 26 September 2003 (Doc. No. 03-6585-D), the Authority asked the Icelandic Government to submit information showing that the premiums had been paid by the airline companies and the cargo operators under the war insurance scheme. The Authority also asked the Icelandic Government to submit information showing that any possible remuneration in excess of the costs to the insurance company administering the scheme did not exceed the *de minimis* threshold.

By letter dated 3 October 2003, forwarded by the Icelandic Mission to the European Union on the same day, received and registered by the Authority 6 October 2003 (Doc. No. 03-6811-A) the Ministry of Finance submitted information about the premiums collected from the beneficiaries and the remuneration costs for the period from 1 June 2002 until 31 August 2003. The Ministry also informed the Authority that the remuneration given to the insurance company changed from 15% to 10% of premium income from 30 June 2002.

2. Description of the proposed measure

The notified aid measures concern the prolongation of the ‘war insurance’ offered as a supplementary insurance by the Icelandic Government after 11 September 2001 to airlines and cargo operators, when commercial insurers no longer provided adequate insurance coverage. The Governmental war insurance scheme was administered by

the insurance company Sjóvá-Almennar Ltd., which is a member of the Nordic Aviation Insurance Group (NAIG) and is underwriting aviation insurance business in Iceland on behalf of NAIG. The insurance company was entitled to a remuneration of 15% of the gross premium income (paid by the airline companies and the cargo operators), which it deducted before transferring the premium income to the State. However, as submitted by the Icelandic authorities, the level of remuneration was reduced to 10% for the period from 1 July to 31 August 2002.

With the present notification, Iceland informed the Authority about the final prolongations of the war insurance scheme until 31 August 2002. According to the information submitted in the notifications by the Icelandic Government, the prolongation of the war insurance was granted on existing terms. For further information on the conditions of the Governmental war insurance scheme, reference is made to the Authority's Decision of 21 November 2001⁵ and its Decision of 31 May 2002.⁶

The Icelandic Government terminated the war insurance scheme with effect from 1 September 2002.

II. APPRECIATION

1. Procedural requirements

Pursuant to Article 1 (3) in Part I of Protocol 3 to the Surveillance and Court Agreement, *“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”*.

Since the Icelandic Government put the measures into effect before the Authority had given its approval, the aid must be regarded as unlawful on procedural grounds within the meaning of Article 1 (f) in Part II of Protocol 3 to the Surveillance and Court Agreement.

2. The presence of State aid

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

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.”

⁵ Dec. No. 361/02/COL.

⁶ Dec. No. 89/02/COL.

2.1 Aid to airline companies and cargo operators.

Based on the Authority's assessment in its previous decisions⁷, the war insurance scheme gives the airline companies and the cargo operators a financial advantage which is financed by the Icelandic State and distorts or threatens to distort competition between air carriers and airports within the EEA and affects trade between the Contracting Parties.

Therefore the Authority has concluded that the prolongation of the war insurance scheme for the period of 1 June to 31 August 2002 constitutes aid within the meaning of Article 61(1) of the EEA Agreement.

2.2 Remuneration for services rendered by Sjóvá-Almennar Ltd.

As regards the payment of commission to the insurance company Sjóvá-Almennar Ltd., amounting to 15% of premium income, later reduced to 10% as of 1 July 2002, the Authority examined whether this payment offered the company an advantage which it would not have enjoyed in the normal course of business.

In its Decision of 31 May 2002⁸ regarding the war insurance scheme in Iceland, the Authority noted that the monthly remuneration received (USD 11,5000 or €12,600) exceeded the estimated monthly costs for the administration of the war insurance scheme (USD 6,500 or – at the time - € 7,100) by € 5,500. However, the difference between remuneration and estimated costs - for the period covering 25 October 2001 to 31 May 2002 - would amount only to € 38,500 which was below the de minimis ceiling as laid down in point 12.2 (2) of Chapter 12 of the Authority's State Aid Guidelines. The Authority therefore took the view that any possible remuneration in excess of the costs incurred by Sjóvá-Almennar Ltd. could be considered not to have an appreciable effect on trade between the Contracting Parties and consequently, Article 61 (1) of the EEA Agreement did not apply.

For the final prolongation covering the period from 1 June to 31 August 2002 estimates presented by the Icelandic authorities indicate the same level of direct costs, i.e. approximately USD 6,500 (at the time € 6,578) per month, i.e. USD 19,500 for the three month period. Due to an increase in the premium income the remuneration for the company administering the war insurance scheme increased. For the three months period from 1 June to 31 August 2002 the remuneration for the administration of the war insurance scheme by the company was USD 53,820 (€ 54,468). The remuneration thus exceeded the estimated costs by USD 34,320 (€ 34,733).

In its Decision of 31 May 2002, the Authority pointed out that any prolongation beyond 31 May 2002 which would exceed the de minimis ceiling of 100 000 Euro over a three year period as stipulated in Chapter 12 of the Authority's State Aid Guidelines, could constitute aid within the meaning of Article 61 of the EEA Agreement. In the meantime, Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid⁹ was

⁷ See footnote 5 and 6.

⁸ Dec. No 89/02/COL.

⁹ OJ L 10, 13.1.2001, p. 30.

incorporated into the EEA Agreement¹⁰, which codified the application of the de minimis rules in the form of a block exemption. The threshold of 100 000 Euro over a three year period was kept. The Authority notes that when taking into account the scheme *as a whole*, the level of any possible remuneration in excess of the costs incurred by Sjóvá-Almennar Ltd. amounting to € 73,233 for the period covering 24 October 2001 to 31 August 2002, stays below this threshold.

Consequently, the Authority is of the view that any possible remuneration in excess of the costs incurred by Sjóvá-Almennar Ltd following this final prolongation of the war insurance scheme, can be considered not to have an appreciable effect on trade and competition between the Contracting Parties. Article 61(1) of the EEA Agreement does not apply.

3. Compatibility of the war insurance scheme - assessment under Article 61(2)(b) of the EEA Agreement

By virtue of Article 61(2)(b) of the EEA Agreement, “*aid to make good the damage caused by natural disasters or exceptional occurrences*” shall be compatible with the functioning of this Agreement.

Such aid is deemed compatible with the functioning of the EEA Agreement to the extent that it merely re-establishes the pre-existing competitive position of undertakings affected by exceptional occurrences (i.e. the cancellation of insurance cover for third party damages due to acts of war and terrorism following the terrorist attacks of 11 September 2001). In order for the Authority to verify that the measures taken by the Icelandic Government are necessary and proportionate to re-establish the conditions under which airline companies and airports operated before the events of 11 September 2001, the Authority has taken into account the criteria and prolongation periods established by the European Commission in a number of guidelines and communications.

In its Decision No. 89/02/COL of 31 May 2002, the Authority referred to the Communication of 10 October 2001 concerning “*The repercussion of the terrorist attacks in the United States in the air transport industry*,”¹¹ in which the European Commission explained, *inter alia*, its approach regarding State aid for airline companies related to temporary insurance problems.

On 23 October 2001, the European Commission issued “*Guidelines for renewal of the temporary Government insurance scheme for the airline industry established after the 11 September 2001.*” These guidelines laid down the criteria which have to be fulfilled by the war insurance measures adopted by the EC Member States in order to be regarded as compatible with the EC Treaty, and in particular Article 87 (2) (b) thereof. The scheme was initially limited to 30 days but as the commercial insurance market did not return to normal, the scheme was sustained¹². The Authority applied the same criteria for the assessment under Article 61 of the EEA Agreement in its earlier decisions.

¹⁰ Joint Committee Decision No 88/2002, OJ L 266, 3.10.2002, p. 56 and EEA Supplement No 49, 3.10.2002, p. 42, e.i.f. 1.2.2003.

¹¹ COM (2001) 574 final, 10.10.2001.

¹² For further details please consult Decision of 31 May 2002 (Dec. No. 88/02/COL).

On 28 May 2002, the European Commission agreed that Member States could continue to provide war insurance cover to companies in the air transport industry for a further month, up to 30 June 2002. The Commission would authorise such prolongations, provided that the criteria laid down in the guidelines were respected.¹³

On 2 July 2002, the European Commission adopted a Communication on “*Insurance in the Air Transport sector following the terrorist attacks of 11 September 2001 in the United States*” which allowed EC Member to continue their government mechanisms until 31 October 2002¹⁴.

The Authority notes that Iceland wound up the war insurance scheme with effect from 1 September 2002.

Since the prolongation of the Icelandic war insurance scheme is granted on existing terms, already authorised by the Authority in its Decisions of 21 November 2001¹⁵ and 31 May 2002¹⁶, the Authority regards the final prolongation from 1 June to 31 August 2002 as also being compatible with the EEA Agreement, in particular Article 61(2)(b) thereof, and with the criteria established by the EC Commission.

The Authority also verified that the premium required was actually paid by the benefiting airlines and cargo operators.

HAS ADOPTED THIS DECISION:

The Authority has decided not to raise objections to the prolongation of ‘war insurance’ provided by the Icelandic State to Icelandic airline companies and cargo operators from 1 June until 31 August 2002.

Done at Brussels, 3 December 2003

For the EFTA Surveillance Authority

Einar M. Bull
President

Hannes Hafstein
College Member

¹³ See Press release dated 28 May 2002, IP/02/767 “*Air transport insurance after 11 September: the Commission authorizes an extra month of emergency state aid.*”

¹⁴ In case No NN 47/2003, the EC Commission approved the Dutch Government’s extension of its State guarantee scheme for aviation industry until 31 October 2002 accordingly.

¹⁵ Dec. No. 361/01/COL.

¹⁶ Dec. No. 89/02/COL.