

EFTA SURVEILLANCE AUTHORITY DECISION

of 13 October 2010

on a scheme under the Act on Incentives for Initial Investments in Iceland (“*Lög um ívilnanir vegna nýffjárfestinga á Íslandi*”)

(Iceland)

The EFTA Surveillance Authority (“the Authority”)

HAVING REGARD to the Agreement on the European Economic Area (“the EEA Agreement”), 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 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 1(3) of Part I and 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”)¹,

HAVING REGARD to the Authority’s Guidelines on national regional aid (“Regional Aid Guidelines”)²,

HAVING REGARD TO the Authority’s Decision 378/06/COL of 6 December 2006 on the map of assisted areas and levels of aid (Iceland)³,

Whereas:

I. FACTS

1 Procedure

The Icelandic authorities notified a scheme under the Act on Incentives for Initial Investment (the Investment Incentives Scheme), pursuant to Article 1(3) of Part I of Protocol 3 by letter dated 28 June 2010 (Event No 562315). The notification replaced a notification dated 27 May 2010. Prior to the notification, pre-notification contacts had taken place between the Authority and the Icelandic authorities in the period between 27 March 2010 and 7 May 2010.

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

² Available at: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

³ Available at: <http://www.eftasurv.int/?1=1&showLinkID=10643&1=1>

On 12 August 2010, the Authority requested the Icelandic authorities, in accordance with Article 4(5) of Part II of Protocol 3, to agree to a one-month extension of the preliminary investigation phase, *i.e.* until 29 September 2010 (Event No 566356). On 18 August 2010, the Icelandic authorities agreed to the request (Event No 566852). Subsequently the Icelandic authorities submitted additional information in an email on 17 September 2010 (Event No 570788) and by letter dated 27 September 2010 (Event No 570969), informing the Authority of a change in the legal basis.

2 Description of the proposed measure

2.1 Scope of the notification

The Icelandic authorities notify measures provided for under Chapter III of Act No 99/2010 on Incentives for Initial Investments in Iceland (the Incentives Act); the chapter on regional aid. Chapter I, II and V of the Incentives Act apply to the measures.

Chapter IV of the Incentives Act contains measures outside the scope of this notification.

2.2 National legal basis for the aid measure

The national basis for the Investment Incentives scheme is Act No 99/2010 on the Incentives for Initial Investments in Iceland, adopted by the Parliament on 29 June 2010⁴.

The scheme will be governed by a regulation to be adopted by the Ministry of Industry. The Icelandic authorities have submitted a draft Regulation to the Authority, dated 27 September 2010 (the Regulation).

2.3 The objective of the aid scheme

The Investment Incentives scheme is a regional aid scheme to promote regional development. The objective of the scheme, as notified, is to “*promote new investment in commercial operations, the competitiveness of Iceland and regional development by specifying what incentives are permitted in respect of initial investments in Iceland and how they should be used*”.

The aim of the scheme is to promote initial investments thereby creating jobs in disadvantaged regions by providing undertakings with an incentive to invest in regions covered by the scheme. The scheme forms a part of a defined regional policy for Iceland with the objective of fighting depopulation and unemployment in the rural areas, in accordance with a proposal for a Parliamentary Resolution on a defined regional policy for Iceland for 2010 to 2013⁵.

2.4 Geographical scope of the scheme

The scheme will be implemented in the areas eligible for national regional aid as defined in the Authority’s Decision 378/06/COL; the South electoral district, the North West electoral district and the North East electoral district (“*Suðurkjördæmi*”, “*Norðvesturkjördæmi*” and “*Norðausturkjördæmi*”).

⁴ In Icelandic: “Lög um ívilnanir vegna nýfjárfestinga á Íslandi”

⁵ In Icelandic: “Tillaga til þingsályktunar um stefnumótandi byggðaáætlun fyrir árin 2010-2013”. The proposal was put forward in the Parliament 31 March 2010, and is expected to be adopted shortly, according to information submitted by the Icelandic authorities.

2.5 Form of the aid

The scheme provides for initial investment projects incentives in the form of direct grants, various types of tax concessions and in the form of sale/lease of land below market price. One beneficiary can be granted one or more types of aid.

2.5.1 Direct grant

Aid will be granted in the form of direct grants. Such direct grants will be accrued and granted at the start of an eligible investment project.

2.5.2 Tax concessions and exemptions from charges

The scheme entails different elements of derogations from taxes and charges:

1. The maximum payable corporate income tax rate for the company investing in the relevant project will be fixed at the rate applicable at the time of signing of an agreement between the company and the Ministry of Industry;
2. Derogation will be granted from depreciation rules: derogation of assets to no residual value in lieu of the statutory 10% provided for in Act No 90/2003 on income tax and moreover, the beneficiary can, in the year when the assets are taken into operation, choose to depreciate such assets with a proportional factor of the annual depreciation instead of full year's depreciation as required by Article 34 of Act 90/2003;
3. Exemption will be granted from industrial charge according to Act No 134/1992 and market charge according to Act No 160/2002;
4. Stamp duty on documents relating to the investment will be fixed at 0.15% in lieu of the statutory stamp duty provided for in Act 36/1978;
5. Exemption will be granted from electricity safety control fee according to Art 14(1)(1), 14(1)(4) and 14(1)(5) of Act No 146/1996 on the safety of electrical installation, consumer utilities and electrical equipment;
6. Municipal property tax rate will be 30% less than the maximum rate stipulated in Chapter II of Act No 4/1995;
7. General social security charge will be 20% less than stipulated in Article 2(3) of Act No 113/1990 on social security charge;
8. Exemption will be granted from customs duties pursuant to Act No 88/2005 and from excise duties pursuant to Act No 97/1987, on import and domestic purchase of construction materials, machinery and equipment other than capital goods and spare parts for the construction of an investment project and the operation thereof.

2.5.3 Sale/lease of land below market price

The scheme provides for an authorisation for the government and for the municipalities in the relevant regions to sell and lease a site for the investment project at a price below market price.

2.6 Activities to receive aid and criteria for receiving aid

The scheme is not targeted at particular sectors of activity. All sectors of activity are eligible for aid, provided they comply with the criteria laid down in Article 5 of the Incentives Act, with the exemption of the financial sector⁶.

⁶ The Icelandic authorities have referred to the definition provided for in Article 2 of Act No 87/1998 on Official Supervision of Financial Activities as regards the activities exempted from the scope of the scheme. The exempted activities according to this are: commercial banks, savings banks and other credit institutions, electronic money undertakings, insurance companies, companies and individuals acting as insurance intermediaries, enterprises engaged in securities services, mutual funds (UCITS) and management companies, stock exchanges, other regulated securities markets and multilateral trading

According to Article 5 of the Incentives Act the following conditions must be met to receive aid:

- a. a separate company must be established in Iceland for the investment project, a branch or an agency of a company registered within the EEA qualifies as a separate company in this respect;
- b. detailed information must be made available on the investment project, on the parties behind it and on the financing;
- c. the project must not have been initiated before the signing of an agreement with the Minister of Industry on the granting of the aid;
- d. a minimum of 65% of the investment cost must be financed by the beneficiary without any kind of public aid and a minimum of 20% thereof shall be own equity;
- e. the annual turnover of the project must be a minimum of 300 million ISK, or the investment must create at least 20 new jobs (directly employed in the establishment) within two years;
- f. a feasibility study, demonstrating that the investment is nationally beneficial for the Icelandic economy and community, *e.g.* in terms of job creation, regional development, exports, tax revenues, innovation and increased knowledge shall be provided;
- g. the investment shall be initial investment and the equipment acquired should be new or almost new⁷
- h. the investment shall be in operation in the region for at least 10 years;
- i. the economic activity of the beneficiary shall comply with Icelandic law and be in conformity to what is socially acceptable;
- j. the company or its owners shall not be in default of taxes or charges payable to the State, in financial difficulties or undergoing financial restructuring; and
- k. finally, Article 5 of the Incentives Act contains conditions concerning the owners of qualified shareholding and CEOs of the potential beneficiaries such as an unblemished reputation and not having been declared bankrupt in the past five years.

2.7 Investments projects promoted

The scheme provides for the promotion of initial investment, understood as investment in material and immaterial assets relating to:

- the setting-up of new establishment; and
- the extension of an existing establishment.

2.8 Eligible expenditure

The eligible expenses for tangible investments are the expenditures for initial investments in land, buildings, machinery and equipment.

facilities (MTF), central securities depositories (CSD), pension funds and other parties authorized by law to accept deposits.

⁷ The Icelandic authorities have confirmed that it is conditional that the assets acquired should be new to the company.

Immaterial assets (e.g. software rights and licenses) shall also be regarded as eligible costs provided:

- (i) they are exclusively used in the establishment receiving the regional aid;
- (ii) they are regarded as amortisable assets;
- (iii) they are purchased from third parties under market conditions;
- (iv) they are included in the capital assets of the firm and remain in the establishment receiving the aid for at least five years from granting of aid;
- (v) they do not exceed 50% of the total eligible investment expenditure for the project in case of large firms.⁸

According to the notification, replacement investment is excluded from the scheme.

2.9 Eligible applicants

All undertakings, foreign and Icelandic, planning to invest in the eligible regions in Iceland are eligible for aid under the scheme, with the conditions laid down in Article 5 of the Incentives Act.

The scheme applies to large firms as well as SME's. The Icelandic authorities have estimated the annual number of beneficiaries to be below ten.

Assistance for firms in difficulty and/or for the financial restructuring of firms in difficulty is excluded from the scheme.

2.10 Aid intensities

The aid intensities applicable under the scheme are 15% of the eligible investment costs for large companies, 25% for medium sized companies and 35% for small companies.

Adjusted aid ceilings apply for large investment projects⁹.

2.11 Duration and time frame

The duration of the scheme is until 31 December 2013.

According to the scheme, the Ministry of Industry and where applicable, the relevant municipality, will enter into individual agreements with each beneficiary. The maximum time frame of such agreements is 13 years from the date of signature. However, derogations from taxes and charges shall be granted for periods not exceeding 10 years calculated from the date when the relevant tax liability occurs or the obligation to pay the relevant charges is triggered.

2.12 Budget

Direct grants under the scheme will be financed through annual budgetary decisions. The Icelandic authorities have explained that the state budget for 2011 will stipulate the amount for direct grants under the scheme for that year, and similarly for 2012 and 2013. The Icelandic authorities have not estimated the budget for direct grants under the scheme.

Regarding the tax concession and exemption from charges, the Icelandic authorities have estimated the foregone revenues to amount to approximately 17 million Euro annually¹⁰.

⁸ According to Articles 2(4)(a) to 2(4)(e) of the Regulation.

⁹ According to Article 6 of the Regulation.

¹⁰ Discounted value.

The State's participation through sale/lease of land below market price has not been estimated by the Icelandic authorities.

2.13 Incentive effect and necessity of aid

Only applications for aid received, together with all necessary documents to assess the application, before start of work on the investment project will be considered for receiving regional aid under the scheme.

The scheme excludes the award of aid to projects which have started before an agreement with the Icelandic authorities is entered into, according to Article 21 of the Incentives Act.

A calculation on the profitability and the benefits of the investment project, to be conducted by the Invest in Iceland Agency (“*Fjárfestingarstofa*”)¹¹ in every individual case, must clearly indicate that the incentive in respect of the relevant investment project will lead to short-term and long-term economic and social benefit for Iceland. The cost benefit calculation will be conducted on the basis of an operating budget and a business plan for the investment project to be provided by the applicant and in accordance with a model which has been created in cooperation with PriceWaterhouseCoopers¹².

2.14 Cumulation and own contribution

Article 20 of the Incentives Act stipulates that aid granted under the Act can not exceed the maximum aid intensities applicable. Aid under the scheme can not be cumulated with aid received from other sources¹³.

Aid under the scheme may not be cumulated with *de minimis* aid for the same eligible expenses if this implies that the maximum aid intensities are exceeded.

The aid scheme includes a clause stipulating that the beneficiary will make a financial contribution, free of any public support, of at least 65% of the total eligible costs.

2.15 Application procedure

Aid under the scheme will only be granted upon application from undertakings.

Applications will be submitted to the Ministry of Industry. A committee on new investment incentive appointed by the Minister of Industry will review the applications and propose to the Minister of Industry to accept or reject an application.

To be considered as a beneficiary, an applicant must fulfil the criteria laid down in Article 5 of the Incentives Act, see Section 2.6 above. Furthermore, a cost benefit calculation will be conducted by the Invest in Iceland Agency, as described above under section 2.13.

The Minister of Industry will enter into agreements with successful applicants.

2.16 Monitoring of the scheme, reporting and individual notifications

Beneficiaries under the scheme are obliged to submit annual reports to the Ministry of Industry on the progress of the investment project, on the incentives' share in its

¹¹ The Invest in Iceland Agency, founded in 1995, is run by the Trade Council of Iceland and the Ministry of Industry. The Agency provides information and expert service regarding all aspects of investments in Iceland, see www.invest.is

¹² This report will according to the Icelandic authorities furthermore establish whether the aid is a necessary precondition for the aid to be undertaken in the region in question.

¹³ Article 21 of the Regulation.

advancement and the total amount of state aid granted in the preceding year, and the preconditions for these calculations and specification of other commercial activities of the beneficiary.

Before applying the scheme, the Icelandic authorities will publish the final text of the scheme on the internet at the address www.idnadarraduneyti.is. Projects for which expenses were incurred before the date of publication of the scheme will not be eligible for aid under the scheme.

The Icelandic authorities have committed to notifying individually all aid awarded to large investment projects according to paragraph 53 of the Regional aid guidelines.

II. ASSESSMENT

1 The presence of state aid

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.”

In the following, the Authority will assess whether the criteria for the existence of state aid within the meaning of Article 61(2) of the EEA Agreement are fulfilled as regards the notified scheme concerning direct grants, tax ad fee concessions and the sale/lease of land below market price described under I.2.5. above.

1.1 Presence of state resources

To be qualified as state aid, the advantage must be granted by the State or through State resources. The direct grant under the scheme is granted through the state budget and therefore constitutes a transfer of state resources.

For purposes of the state aid rules, the term “State” covers also regional and local bodies.¹⁴ A loss of tax revenue is equivalent to consumption of State resources in the form of fiscal expenditure and state support may be provided equally by tax provisions of a legislative, regulatory or administrative nature as through the practices of the tax authorities.¹⁵ A reduction in the tax base or a total or partial reduction on the amount of tax, fees or charges, involves a loss of revenue and is therefore equivalent to the consumption of State resources in the form of fiscal expenditure.

Furthermore, the sale and lease of land below market price involves a loss of revenue and is therefore transfer of state resources.

1.2 Favouring certain undertakings or the production of certain goods

The notified scheme will allow beneficiaries to be relieved of part of the costs which they would normally have to bear themselves in their course of business.

¹⁴ Case C-248/84 *Germany v Commission* [1987] ECR 4013.

¹⁵ See paragraph 3 of the Authority’s Business Taxation Guidelines.

The scheme is open to entities in economic activities in all sectors except the financial sector. The scheme is furthermore selective as only undertakings investing in certain regions in Iceland eligible for assistance under Article 61(3)(c) of the EEA Agreement can receive aid under the scheme.

Thus, the scheme favours certain undertakings and the production of certain goods within the meaning of Article 61(1) of the EEA Agreement.

1.3 Distortion of competition and affect on trade between Contracting Parties

In the present case, the measures will strengthen the competitive situation of the supported undertakings in the eligible regions compared to their actual or potential competitors in the EEA. The scheme applies to all sectors, with the exemption of the financial sector, and therefore has a potential to distort trade within the EEA since it cannot be excluded that in some of these sectors there is competition between the aid beneficiaries and undertakings in the EEA.

1.4 Conclusion

Based on the above findings, the Authority comes to the conclusion that the notified scheme constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

2 Procedural requirements

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”*.

By submitting a notification of the Investment Incentives Scheme with a letter dated 28 June 2010 (Event No 562315) and by not implementing the scheme until the approval by the Authority, the Icelandic authorities have complied with the notification requirement.

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

3.1 Introduction

Having established that the notified scheme involves State aid within the meaning of Article 61(1) of the EEA Agreement, the Authority has assessed the compatibility of the proposed regional investment aid scheme with Article 61(3)(c) of the EEA Agreement and in light of the Regional aid guidelines.

Article 61(3)(c) concerns aid to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the interests of the Contracting Parties to the EEA Agreement, as compatible with the EEA Agreement. Aid granted for regional development is assessed under the Regional aid guidelines.

The assessment has lead to the following observations.

3.2 Eligible projects and regional development strategy

The Authority observes that investments projects located in regions eligible for regional aid under the scheme are those covered by the regional aid map, according to the Authority's Decision 378/06/COL of 6 December 2006 on the map of assisted areas and levels of aid (Iceland).

The scheme applies to large firms as well as SMEs and is designed to promote economic development in regions covered by the regional map for Iceland by supporting investment. In line with paragraph 2 and 10 of the Regional aid guidelines, the scheme applies to a wide range of sectors, maintaining the pluri-sectoral and open character of the scheme. Furthermore, the scheme forms a part of a regional development strategy with clearly defined objectives¹⁶.

Assistance to firms in difficulty and/or for the financial restructuring of firms in difficulty is excluded from the scheme, in accordance with paragraph 9 of the Regional aid guidelines.

3.3 Form of aid, aid ceilings and own contribution

Aid under the scheme will be granted for initial investment according to definitions in paragraphs 25 of the Regional aid guidelines. Investment in material and immaterial assets relating to the setting-up of new establishments and the extension of an existing one are regarded as initial investment under the scheme, in line with paragraph 26 of the Regional aid guidelines. The Icelandic authorities have explained that the acquisition of the type referred to in paragraph 27 of the Regional aid guidelines (takeovers) is not regarded as initial investment under the scheme.

Replacement investments are excluded from the scheme in line with paragraph 26 of the Regional aid guidelines.

The form of investment aid notified under the scheme is direct grants, exemptions and reduction in taxes and compulsory charges and supply of land at favourable prices, all covered by paragraph 29 of the Regional aid guidelines. The maximum duration of the exemptions as regards taxes and charges will be 10 years and 13 years for lease of land below market price.

The level of aid is calculated as a percentage of the investment project's eligible material and immaterial costs and will not exceed the applicable regional aid ceiling, which is 15% of the eligible investment costs for large companies, 25% for medium sized companies and 35% for small companies, according to paragraphs 36 and 38 of the Regional aid guidelines.

The Authority observes that the tax and fee concessions (such as corporate tax, municipality property tax, market charge, industrial charge etc.) are imposed on revenue and property and are not as such related to direct investment costs. In addition to the reference made in paragraph 29 of the Regional aid guidelines to tax exemptions as an example of investment aid, the Authority's Business Taxation Guidelines provide that it is possible to qualify aid as investment aid where the aid is limited in terms of a fixed

¹⁶ See the Parliamentary Resolution on a defined regional policy for Iceland for 2010 to 2013 referred to under Section I.2.3 above.

percentage of the investment costs. This is also confirmed by case law.¹⁷ Paragraph 4(3) of the Business Taxation Guidelines reads as follows:

Where a fiscal aid is granted in order to provide an incentive for firms to embark on certain specific projects (investment in particular) and where its intensity is limited with respect to the costs of carrying out the project, it is no different from a subsidy and may be accorded the same treatment. Nevertheless, such arrangements must lay down sufficiently transparent rules to enable the benefit conferred to be quantified.

As a preliminary point the Authority observes that it is a condition for granting aid under the scheme that the investment in question is undertaken and, in that sense, the aid is linked to the investment project. Moreover, the Authority considers that if the grant of the aid is subject to an overall ceiling which is expressed as a percentage of the amount of the investment (*i.e.* 15%, 25% and 35%), this would be sufficient to classify the aid as investment aid irrespective of the fact that the fiscal aid is not related to investment costs but rather to profits or revenue. The Authority observes that the grant of aid under the scheme is subject to an agreement between the State and the beneficiary, which shall provide an estimate of the discounted value of the total aid granted over the duration of the agreement (tax and fee concessions can be granted for up to 10 years)¹⁸. According to Article 24 of the Regulation, the lawful application of the state aid rules will be ensured by the Ministry of Industry. As described under section I.2.16. above, beneficiaries will be obliged to submit annual reports. According to Article 24 of the Regulation the Ministry of Industry will review these annual reports and assess whether the aid amount granted is within the aid intensities established by the agreement between the State and the beneficiary and may engage external independent experts to assess the calculation.

On the basis of these considerations the Authority considers that aid resulting from the identified tax and fee measures, by means of the ceiling expressed as a percentage of the investment costs, qualify as investment aid. Hence state aid resulting from the (i) fixed maximum corporate income tax rate; (ii) favourable depreciation rules; (iii) exemption from industrial charge and market charge; (iv) reduced stamp duties; (v) exemption from safety control fee for electricity production; (vi) reduced municipal property tax; (vii) reduced general social security charge; and (viii) exemption from import duties qualify as investment aid and can be counted towards the aid ceiling.

The aid scheme includes a clause stipulating that the beneficiary will make a financial contribution, free of any public support, of at least 65% of the total eligible costs, which is well above the minimum required under paragraph 31 of the Regional aid guidelines (25%).

3.4 Eligible expenses

Expenditures on land, buildings, machinery and equipment¹⁹ are eligible for aid for initial investment. This is line with paragraph 39 of the Regional aid guidelines²⁰.

¹⁷ Joined cases C-186/02 P and C-188/02 *Ramondin v Commission* [2003] ECRI-2415 and Joined cases C-183/02 P and C-187/02 P *Demasa and Territorio Histórico de Álava v Commission* [2004] ECR I-10609.

¹⁸ According to Article 20(4) of the Regulation.

¹⁹ The Icelandic authorities have confirmed that in the transport sector, expenditure on the purchase of transport equipment (movable assets) is excluded from the eligible investment expenditure under the scheme.

²⁰ The Icelandic authorities have explained that costs in the case of takeovers and lease of assets other than land and buildings are not eligible expenditure under the scheme.

The aid is conditioned on the obligation of maintaining the investment in the region concerned during a minimum period of 10 years, which is above the minimum required under paragraph 32 of the Regional aid guidelines (three years in the case of SMEs and five years for large companies).

The scheme ensures that the assets acquired are new or almost new. The Icelandic authorities have confirmed that only assets that are new to the company will be considered as eligible expenses, in line with paragraph 43 of the Regional aid guidelines.

The scheme contains a clause ensuring that the provision on 50% maximum share of intangible assets in eligible costs of investments in case of large companies (paragraph 44 of the Regional aid guidelines) is respected.

Furthermore, eligible intangible assets will be subject to necessary conditions for ensuring that they remain associated within the recipient region eligible for the regional aid, and consequently, that they are not subject of a transfer benefiting other regions, especially other regions not eligible for regional aid. To this end, the scheme contains provisions²¹ which guarantee that eligible intangible assets, in accordance with paragraph 45 of the Regional aid Guidelines, will satisfy the following conditions:

- they must be used exclusively in the establishment receiving the regional aid;
- they must be regarded as amortizable assets;
- they must be purchased from third parties under market conditions; and
- they must be included in the assets of the firm and remain in the establishment receiving the regional aid for at least five years.

3.5 Large investments projects

The Icelandic authorities have committed to notifying individually all large investment projects in accordance with paragraphs 53 and 56 of the Regional aid guidelines.

3.6 Necessity and incentive effect

The scheme provides for a cost benefit analysis calculation to be conducted by the Invest in Iceland Agency before start of work and granting of aid, ensuring the necessity and proportionality of the aid to be established *ex ante* in line with the principles of the Regional aid guidelines. Moreover, no aid will be granted under the scheme to projects on which work has started before the signing of an agreement on the granting of aid between the State and the beneficiary. The Icelandic authorities have confirmed that the scheme excludes the award of aid to projects which have started before publication of the final text of the scheme in line with paragraph 93 *in fine* of the Regional aid guidelines.

Thus, the incentive effect conditions described in paragraph 30 of the Regional aid guidelines are fulfilled.

3.7 Cumulation

The Ministry of Industry is responsible for ensuring that cumulation of aid under the scheme and other measures does not imply that maximum aid intensities are exceeded. The Icelandic authorities have committed to ensuring that rules on cumulation of the Regional aid guidelines will be respected.

²¹ Article 2(4)(a) to 2(4)(d) of the Regulation.

3.8 Reporting and monitoring

The reporting and monitoring obligations set out in Protocol 3 to the Surveillance and Court Agreement and the Authority's Decision No 195/04/Col of 14 July 2004, are complied with under the scheme.

With the objective of ensuring transparency of regional aid and in line with paragraph 93 of the Regional aid guidelines, the Icelandic authorities have committed to publishing the final text of the scheme, including the Incentive Act and the Regulation to be adopted, on the internet address www.idnadarraduneyti.is, before applying the scheme, and to communicate the publication to the Authority.

The scheme will expire on 31 December 2013. Consequently, the duration of the scheme is in line with the duration of the regional aid map and the duration of the Regional aid guidelines.

In the light of the above, the Authority considers the notified aid scheme to be compatible with the functioning of the EEA Agreement in accordance with Article 61(3)(c) of the EEA Agreement.

4 Conclusion

On the basis of the foregoing assessment, the Authority considers that the Investment Incentive Scheme which the Icelandic authorities have notified is compatible with the functioning of the EEA Agreement within the meaning of Article 61 of the EEA Agreement.

Prior to implementing the scheme, the Icelandic authorities shall publish the full text of the final aid scheme on the internet and communicate it to the Authority.

The Icelandic authorities are reminded about the obligation resulting from Article 21 of Part II of Protocol 3 in conjunction with Articles 5 and 6 of Decision No 195/04/COL to provide annual reports on the implementation of the scheme.

The Icelandic authorities are also reminded that all plans to modify this scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority concludes that the aid is compatible with the EEA Agreement and raises no objections to the scheme notified as the Investment Incentives Scheme, on the basis of Article 61(3)(c) of the Agreement and the Regional aid guidelines.

Article 2

The implementation of the measure is authorised accordingly.

Article 4

This Decision is addressed to the Republic of Iceland.

Article 5

Only the English language version of this decision is authentic.

Done in Brussels, on 13 October 2010.

For the EFTA Surveillance Authority

Per Sanderud
President

Sverrir Haukur Gunnlaugsson
College Member