

Brussels, 30 March 2020
Case No: 84976
Document No: 1122626
Decision No 029/20/COL

Ministry of Trade, Industry and Fisheries
PO Box 8090 Dep
0032 Oslo
NORWAY

Subject: COVID-19 Guarantee scheme for airlines

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the public guarantee scheme in favour of airline operators holding a Norwegian Air Operator Certificate (“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 Article 61(3)(b) of the EEA Agreement. ESA has based its decision on the following considerations.

2 Procedure

- (2) The Norwegian authorities notified the measure on 30 March 2020.²

3 Description of the measure

3.1 Background

- (3) As recognised in the Commission’s Communication on the Temporary Framework for state aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework”),³ the COVID-19 outbreak has caused a major shock to global and national economies. The containment measures adopted by the Norwegian government and other national governments, such as social distancing requirements, travel restrictions, quarantines and lockdowns, have led to a sudden decline in demand for and supply of air services nationally and globally.
- (4) The Norwegian authorities have introduced several measures to prevent the spread of the COVID-19 virus:
- (i) Responsible health authorities have closed down schools and universities, prohibited cultural and sports events, and closed down certain business activities and meeting points.⁴

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 Documents No 1124312 and 1124313.

³ [Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak](#) of 19 March 2020 (OJ C 911, 20.3.2020, p. 1–9).

⁴ Decision of the Norwegian health authorities of 12 March 2020, available [here](#).

- (ii) The Government has advised against non-essential travel to all countries. The advice applies until 14 April 2020.⁵
 - (iii) The Government has adopted a Regulation on mandatory quarantine and isolation for all persons arriving to Norway from abroad.⁶
 - (iv) The Government has introduced stricter border controls.⁷
 - (v) The Government has adopted a Regulation concerning, *inter alia*, rejection of foreign nationals without a residence permit in the realm.⁸
 - (vi) The Government has prohibited the use of recreational properties located outside the municipality of people's registered domiciles.⁹
 - (vii) The publicly held airport owner Avinor¹⁰ has temporarily closed nine airports (Short Take-Off and Landing (STOL) airports) for commercial traffic.¹¹
- (5) In the context of these national measures, as well as containment measures adopted by national authorities across the EEA, undertakings in all sectors may face liquidity problems. The containment measure negatively affect the aviation sector in particular. The demand for passenger travel by air in Norway has dropped significantly after the COVID-19 outbreak, see Table 1 below. The situation is uncertain and it is difficult to forecast when air travel will increase again. This depends on government restrictions and containment measures nationally and internationally.

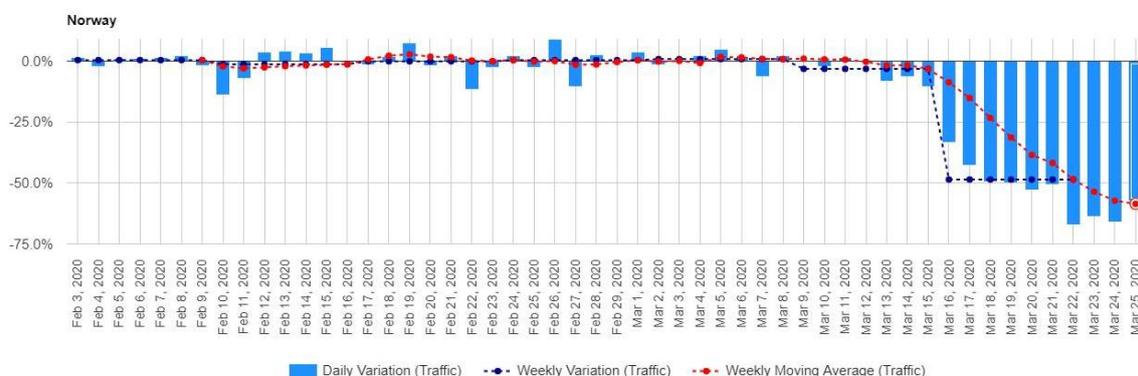


Table 1: daily variation of Air Traffic in Norway for the period 3 February to 25 March 2020 compared to the same period 2019.

- (6) The Norwegian authorities consider the airline industry as a necessary part of Norway's critical infrastructure and a major contributor to Norway's economy. Norwegian airlines serve a majority of the intra-EEA market to/from Norway, with Norwegian Air Shuttle ("NAS") and SAS Scandinavian Airlines ("SAS") accounting

⁵ Government travel advice, available [here](#).

⁶ Forskrift om endring i forskrift om karantene mv. etter reiser utenfor Norden ([FOR-2020-03-15-295](#)).

⁷ <https://www.regjeringen.no/no/aktuelt/innforer-strengere-grensekontroll/id2693624/>.

⁸ Forskrift om bortvisning mv. av utlendinger uten oppholdstillatelse i riket av hensyn til folkehelsen ([FOR-2020-03-15-293](#)).

⁹ Forskrift om karantene, isolasjon og forbud mot opphold på fritidseiendommer mv. i anledning utbrudd av Covid-19 ([FOR-2020-03-15-294](#)).

¹⁰ <https://avinor.no/en/corporate/about-us/the-avinor-group/about-the-company>.

¹¹ Decision available [here](#).

for respectively 37% and 28% of EEA routes to/from Avinor airports in 2019.¹² Norwegian airlines are moreover responsible for a significant share of domestic air services in Norway, with NAS, SAS and Widerøe accounting for respectively 37%, 46% and 16% of domestic traffic in 2019.

- (7) The airline industry generates economic growth, creates jobs, and facilitates trade and tourism. Furthermore, aviation plays a vital role in the Norwegian economy and enables Norway to participate fully in the single market. It is crucial to ensure that Norway will have a viable airline industry and operative air services both during and after the COVID-19 outbreak. In the absence of state intervention and public support measures, the aviation sector faces dramatic consequences and possible bankruptcies due to the sudden shortage of liquidity, or lack of access to liquidity, following the COVID-19 outbreak. Such an outcome could have severe implications for Norway's critical infrastructure in the future.
- (8) In this context, the Norwegian Parliament agreed to support the airline industry on 19 March 2020.¹³ The measure will ensure the short-term viability of both larger undertakings that are part of Norway's critical infrastructure and of smaller airlines.

3.2 Objective

- (9) The objective of the measure 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.

3.3 Granting authority

- (10) The Norwegian Export Credit Guarantee Agency ("GIEK") administers the measure. The measure is financed from the state budget.

3.4 National legal basis

- (11) The legal basis of the measure is the Parliamentary Decision authorising the guarantee scheme for airlines.¹⁴
- (12) The conditions for the measure are further set out in the Ministry's assignment to GIEK, and will be reflected in the terms and conditions for the guarantee agreements between GIEK and the eligible beneficiaries.

3.5 Beneficiaries

- (13) The beneficiaries of the measure are airlines operating under a Norwegian Air Operator Certificate ("AOC"). Currently, 24 undertakings hold a Norwegian AOC.¹⁵ All AOC operators will be eligible for support provided that they satisfy the

¹² The numbers do not include international flights to/from the two non-Avinor airports of Torp and Haugesund.

¹³ The decision was based on a proposal from the Norwegian Government, see [Prop. 57 S \(2019-2020\)](#).

¹⁴ [Parliamentary Resolution No. 427](#) authorising the guarantee on the conditions proposed by the Ministry. See also the Recommendation to authorise the scheme, [Innst. 200 S \(2019-2020\)](#) and the Governmental proposal [Prop. 57 S \(2019-2020\)](#).

¹⁵ <https://luftfartstilsynet.no/aktorerer/flyselskap/godkjente-flyselskaper/>.

conditions for making the public guarantee available. The potential beneficiaries of the measure are thus both SMEs and large undertakings.

- (14) Undertakings that were in difficulty (within the meaning of Article 2(18)(f) of the [GBER](#)¹⁶) on 31 December 2019 are not eligible for aid. On the other hand, undertakings that have subsequently faced difficulties or entered into difficulty as a result of the COVID-19 outbreak are eligible.
- (15) Public guarantees under the measure are generally only available to airline operators that had an equity ratio of no less than 8% at the end of the last quarterly reporting before the COVID-19 outbreak.¹⁷
- (16) This equity ratio requirement is unrelated to the financial health requirements that operators need to comply with for an operating license under [Regulation \(EC\) No 1008/2008](#).¹⁸
- (17) For undertakings that did not fulfil the equity ratio requirement of 8% at the end of the last quarterly reporting before the COVID-19 outbreak, GIEK can provide a public guarantee in tranches whilst the undertaking works to improve its financial situation. This mechanism is available to all undertakings that do not fulfil the 8% equity ratio.
- (i) The first tranche of the guarantee is limited to 10% of the beneficiary's total guarantee amount as determined by GIEK. The beneficiary does not need to comply with any special conditions to benefit from the first tranche.
 - (ii) The second tranche of the guarantee is limited to 40% of the maximum guarantee amount as determined by GIEK. To receive the second tranche, the beneficiary must obtain a moratorium. Essentially, this implies that the beneficiary must obtain consent from all of its financial creditors for a suspension of payment of instalments and forgiveness of interest payments, for a period of no less than three months. During the three-month period, the beneficiary must take steps that would have resulted in an equity ratio of 8% at the end of the last quarterly reporting before the COVID-19 outbreak. If the requirement for an equity ratio of no less than 8% is not complied with by the end of the moratorium period, the facility and guarantee will terminate immediately.
 - (iii) The third tranche of the guarantee is for the final 50% of the maximum guarantee amount as determined by GIEK. The third tranche is available once the beneficiary fulfils the 8% equity ratio requirement.
- (18) According to the Norwegian authorities, this mechanism ensures that only firms that are normally able to generate enough income to satisfy debt obligations will benefit from the scheme.

¹⁶ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

¹⁷ 'Equity ratio' indicates how much of a company's assets have been generated by issuing equity shares rather than by taking on debt. The ratio, expressed as a percentage, is calculated by dividing total shareholders' equity by the total assets of the company.

¹⁸ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast).

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

- (19) The aid instrument is a guarantee scheme for new loans to all airlines for a limited period and limited loan amount.
- (20) GIEK will be the guarantor of the loans issued to the airlines eligible for support. The guarantees will be provided directly to the airline operators. In other words, GIEK will not channel the guarantees through financial intermediaries. Commercial banks and credit institutions will issue the underlying loans. The commercial banks and credit institutions issuing the relevant loans must be acceptable to the guarantor. In line with its normal practices, GIEK will require that at least one of the lenders have satisfactory experience, or that they collaborate with an agent that has such experience. The Norwegian authorities explain that it is generally important to have an experienced party follow up the debtor. GIEK's discretion is limited, and only inexperienced or unsuitable creditors will be excluded.
- (21) The guarantees may relate to both investment and working capital loans. Any equity instruments or instruments convertible into shares or similar rights are excluded. The maximum duration of the guarantees and the respective commercial loans is two years.
- (22) For loans with a maturity beyond 31 December 2020, the amount of the loan principal will not exceed:
- (a) the double of the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the undertakings site, but formally in the payroll of subcontractors) for 2019, or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or
 - (b) 25% of total turnover of the beneficiary in 2019; or
 - (c) with appropriate justification and based on a self-certification by the beneficiary of its liquidity needs, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs, and for the coming 12 months for large enterprises.
- (23) For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher than described above, subject to an appropriate justification and provided that the proportionality of the aid remains assured.
- (24) The public guarantee cannot exceed 90% of the aggregate amount of the loan. Commercial banks and/or credit institutions must provide the remaining 10% of the guarantee. Losses will be sustained proportionally and under the same conditions by the credit institution and the State.
- (25) GIEK will determine the maximum guarantee amount for each beneficiary based on their size and need for liquidity as a result of the COVID-19 outbreak. These criteria will be applied in a general and non-discriminatory manner for all beneficiaries. If a beneficiary receives support from other EEA States, this will be taken into account when determining the need for liquidity and the size of the guarantee.

- (26) The sum total of guarantees under the measure is estimated at NOK 6 billion.¹⁹
- (27) The Ministry of Trade, Industry and Fisheries will set the guarantee premiums in light of the financial risk, taking into account the maturity of the loan. The guarantee premium will be set at least at 1% (i.e. 100 bps) for all undertakings. The guarantee premium may be increased during the loan period.
- (28) The mobilisation of the guarantee will be contractually linked to specific conditions, which have to be agreed between the parties, when the guarantee is initially granted.
- (29) The Norwegian authorities confirm that aid granted under section 3.2 of the Temporary Framework cannot be cumulated with other aid granted for the same underlying loan principal under section 3.3 of the Temporary Framework. Aid may be cumulated with other compatible aid, de minimis aid or with other forms of EU financing provided that the maximum aid intensities indicated in the relevant Guidelines or Block Exemption Regulations are respected.

3.7 Duration

- (30) The measure will be in effect for a period of three months, from 31 March to 30 June 2020, following ESA's approval.

4 Presence of state aid

- (31) 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.”

- (32) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be granted by the state or through state resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (33) The guarantee scheme is financed through the state budget and is therefore provided through state resources within the meaning of Article 61(1) of the EEA Agreement. GIEK is a public agency tasked with issuing guarantees on behalf of the Norwegian State and reports to the Ministry of Trade, Industry and Fisheries. GIEK has its own board and is normally run as a financial enterprise that issues guarantees on the same conditions as banks.²⁰ For this particular scheme, GIEK is nevertheless merely a vehicle to implement the policy objectives of the State within strictly defined conditions for providing the guarantees in question. The measure is therefore imputable to the State.

¹⁹ Like under the scheme approved by Commission Decision in case SA.56787 [C\(2020\) 1936 final](#) (Germany) *COVID-19: Bundesregelung Bürgschaften 2020*, and in line with the Temporary Framework, paragraph 25(c)–(f), specific limits are placed on the size of each beneficiary's loans to be guaranteed, and on duration, rather than on the sum total of guarantees.

²⁰ GIEK homepage: <https://www.giek.no/overview/>.

- (34) The loan guarantees granted under the measure will give an advantage to the airlines that they would not have received under normal market conditions, specifically financing that they would not have been able to obtain at similar conditions on the market. Normally, taking a risk is remunerated by an appropriate premium. By paying a lower premium than those available on the financial markets, the undertakings are relieved of costs they would normally have to bear, and obtain an advantage.
- (35) While the advantage of the public guarantees directly targets airlines facing a sudden liquidity shortage and not credit institutions or other financial intermediaries, the measure may also constitute an indirect advantage to the banks and/or credit institutions issuing loans guaranteed by GIEK. As explained above, the guarantees will not be channelled through a financial intermediary. If any, the indirect advantage will be limited. ESA will nevertheless take this potential advantage into account when assessing compatibility.
- (36) Since the guarantees are only available to certain undertakings in the aviation sector, i.e. those operating under a Norwegian AOC, the measure is selective.
- (37) The beneficiaries receive an advantage that will improve their competitive position compared to that of other undertakings with which they compete. The airlines that will benefit from the measure are engaged in intra-EEA trade. The measure is therefore liable to distort competition and affect EEA trade.
- (38) In light of the above assessment, ESA concludes that the notified measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

5 Procedural requirements

- (39) 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."
- (40) The Norwegian authorities have notified the measure, which will only enter into force subject to approval by ESA. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

6 Compatibility of the aid measure

6.1 Introduction

- (41) Pursuant to Article 61(3)(b) of the EEA Agreement, ESA can declare state aid compatible with the functioning of the EEA Agreement "[...] to remedy a serious disturbance in the economy of an EC Member State or an EFTA State".
- (42) The disturbance must affect the whole or an important part of the economy of the State concerned, and not merely that of one of its regions or part of its territory. This is in line with the requirement to interpret exceptions, such as Article 61(3)(b) of the EEA Agreement, strictly.
- (43) In the context of the current COVID-19 outbreak, the Commission adopted the Temporary Framework that sets out temporary state aid measures that it

considers compatible under Article 107(3)(b) TFEU, which corresponds to Article 61(3)(b) of the EEA Agreement. The Commission confirms that the current situation, specifically the effect of the containment measures adopted by national states on their economies, justify that aid can be granted on the basis of this provision. This type of aid is available for a limited period to remedy the liquidity shortage faced by undertakings to ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability.

- (44) In order to ensure uniform application of the state aid rules throughout the European Economic Area, in line with the objective of homogeneity established in Article 1 of the EEA Agreement, ESA applies the compatibility conditions set out in the Temporary Framework to state aid granted by the EEA EFTA States under Article 61(3)(b) in the context of the COVID-19 outbreak.

6.2 Aid in the form of guarantees on loans under the Temporary Framework

- (45) Airline operators in Norway are currently facing a challenging situation as a result of the COVID-19 outbreak.
- (46) During the current circumstances, public guarantees on loans for a limited period and loan amount can be an appropriate, necessary and targeted solution in order to ensure access to liquidity to undertakings facing sudden shortage. The compatibility conditions for this type of measures are set out in Section 3.2 of the Temporary Framework. Since GIEK grants the guarantees directly to the beneficiaries, any advantage on the level of banks/financial institutions will be limited.
- (47) According to the Temporary Framework, paragraph 25(a), the minimum level for the guarantee premiums are as follows:

| Type of recipient | Credit risk margin for a 1-year maturity loan | Credit risk margin for a 2-3 years maturity loan | Credit risk margin for a 4-6 years maturity loan |
|-------------------|---|--|--|
| SMEs | 25bps | 50bps | 100bps |
| Large enterprises | 50bps | 100bps | 200bps |

- (48) Since the duration of the guarantees is limited to two years and the minimum guarantee premium for all undertakings will be 1% (i.e. 100 bps), the measure complies with this requirement. In light of the two-year maximum duration, the measure also complies with the maximum six-year limit set out in paragraph 25(f) of the Temporary Framework.
- (49) As guarantees under the measure are only available for a period of three months from the date of ESA's approval, the measure complies with paragraph 25(c) of the Temporary Framework, requiring that the guarantees are granted by 31 December 2020 at the latest.
- (50) For loans with a maturity beyond 31 December 2020, paragraph 25(d) of the Temporary Framework requires that the amount of the loan principal does not exceed:

- (i) the double of the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the undertakings site but formally in the payroll of subcontractors) for 2019, or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or
 - (ii) 25% of total turnover of the beneficiary in 2019; or
 - (iii) with appropriate justification and based on a self-certification by the beneficiary of its liquidity needs, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs and for the coming 12 months for large enterprises.
- (51) As described above, the Norwegian authorities will apply these exact principles to set the maximum amount of the loan principals under the measure. GIEK will not provide guarantees to loans exceeding these limits. Therefore, the measure complies with this requirement.
- (52) According to paragraph 25(f) of the Temporary Framework, the public guarantee must not exceed:
- (i) 90% of the loan principal where losses are sustained proportionally and under same conditions, by the credit institution and the State; or
 - (ii) 35% of the loan principal, where losses are first attributed to the State and only then to the credit institutions (i.e. a first-loss guarantee); and
 - (iii) in both of the above cases, when the size of the loan decreases over time, for instance because the loan starts to be reimbursed, the guaranteed amount has to decrease proportionally.
- (53) The GIEK guarantee limit is set at 90% of the aggregate amount of the loan, and the losses are sustained proportionally, and under the same conditions, by the credit institution and the State. The notified measure therefore complies with paragraph 25(f)(i) and (iii) of the Temporary Framework.
- (54) The Temporary Framework, paragraph 25(g), allows that the guarantees may relate to both investment and working capital loans as envisaged under the measure.
- (55) Finally, according to paragraph 25(h) of the Temporary Framework, guarantees cannot be granted to undertakings that were in difficulty (within the meaning of the GBER) on 31 December 2019. Guarantees may, however, be granted to undertakings that are not in difficulty and/or to undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered in difficulty thereafter as a result of the COVID-19 outbreak. The measure complies with this requirement.
- (56) As described above, the measure is only available to airline operators with an equity ratio of no less than 8% as of 31 December 2019 or in tranches as described above. According to the Norwegian authorities, this system ensures that only airline operators that are normally able to generate enough income to satisfy debt obligations, can receive support under the scheme. Nothing in the

Temporary Framework precludes that national authorities aim to limit their risk through such a mechanism.

- (57) Furthermore, the Norwegian authorities have confirmed that aid granted under section 3.2 of the Temporary Framework cannot be cumulated with other aid granted for the same underlying loan principal under section 3.3 of the Temporary Framework.²¹ Aid may however be cumulated with other compatible aid, de minimis aid²² or with other forms of EU financing provided that the maximum aid intensities indicated in the relevant Guidelines or Block Exemption Regulations are respected.

6.3 Transparency, reporting and monitoring

- (58) The Norwegian authorities commit to comply with the state aid transparency requirements for all support measures granted under the measure.
- (59) The Norwegian authorities will publish relevant information on each individual aid award pursuant to the measure on the comprehensive state aid website within 12 months from the moment of granting. The Norwegian authorities commit to submitting annual reports. They will also provide ESA with a list of measures put in place on the basis of schemes approved under the Temporary Framework by 31 December 2020.
- (60) The Norwegian authorities commit to keeping detailed records regarding the granting of aid provided for by the Temporary Framework. Such records, which must contain all information necessary to establish that the necessary conditions have been observed, must be maintained for 10 years upon granting of the aid, and be provided to ESA upon request.
- (61) ESA is therefore satisfied that the requirements in the Temporary Framework, section 4, are complied with.

6.4 Compliance with intrinsically linked provisions of Directive 2014/59/EU

- (62) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution (“the BRRD”),²³ ESA has taken BRRD Article 32(4)(d)(i) into account in its compatibility assessment.
- (63) The guarantees granted under the public guarantee scheme are not channelled through credit institutions or other financial institutions. There is therefore only minimal risk that the public guarantees constitute an indirect advantage to banks and/or credit institutions issuing loans guaranteed by GIEK. Therefore, the notified measure does not violate any intrinsically linked provisions of BRRD.

7 Conclusion

- (64) ESA considers that the notified 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.

²¹ The Temporary Framework, paragraph 26.

²² The Temporary Framework, paragraph 20, footnote 14.

²³ [OJ L 173, 12.6.2014, p. 190](#) and [EEA Supplement No 98, 12.12.2019, p. 38](#).

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

For the EFTA Surveillance Authority,

Yours faithfully,

Bente Angell-Hansen
President
Responsible College Member

Frank J. Büchel
College Member

Högni Kristjánsson
College Member

Carsten Zatschler
Countersigning as Director,
Legal and Executive Affairs

This document has been electronically authenticated by Bente Angell-Hansen, Carsten Zatschler.