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Case No: 85047
Document No: 1126640
Decision No 039/20/COL

Ministry of Trade, Industry and Fisheries
Postboks 8090 Dep
0032 Oslo
Norway

Subject: COVID-19 Grant scheme for undertakings suffering a substantial loss of turnover

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the COVID-19 Grant scheme for undertakings suffering a substantial loss of turnover (“the measure”), it considers that it constitutes state aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections,¹ as it is compatible with the functioning of the EEA Agreement pursuant to its Article 61(2)(b). ESA has based its decision on the following considerations.

2 Procedure

- (2) The Norwegian authorities notified the measure on 17 April 2020.² ESA requested additional information by two telephone conferences and received the information by electronic mail on the same day.³

3 Description of the measure

3.1 Background

- (3) The COVID-19 outbreak in Norway is a serious hazard for life and health. To counteract the negative impact of the outbreak, Norway has implemented strong preventative public health measures, such as isolation and quarantine requirements, the closing of kindergartens, schools and universities, restrictions on provision of certain services requiring close contact between the customer and the service provider, and a general recommendation for all people to practice social distancing.⁴
- (4) In the context of these national measures, the Norwegian economy is currently experiencing a severe economic downturn and a sharp rise in the number of temporary lay-offs.

¹ Reference is made to Article 4(3) of the Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

² Document Nos 1127735 and 1127736.

³ Document Nos 1127884 and 1127885, respectively 1127918 and 112919.

⁴ <https://www.regjeringen.no/no/tema/koronavirus/nasjonale-tiltak/id2693684/>;

<https://www.helsedirektoratet.no/veiledere/koronavirus>;

<https://helsenorge.no/koronavirus/arrangement-og-aktiviteter>.

- (5) The COVID-19 outbreak affects undertakings of all sizes across all sectors of the economy in Norway. Prior to the outbreak, unemployment was at the lowest level in ten years. Now, many undertakings face a sudden loss of turnover. For many, the losses are already acute and they are not able to pay their monthly fixed costs. Many others are likely to face this problem in the coming weeks. In the absence of support, this acute financial distress could lead to a wave of bankruptcies and further job losses. Such an outcome would be expected to have long-lasting adverse effects for the Norwegian economy.
- (6) There is considerable uncertainty about the full economic impact of COVID-19. The measure will cover part of affected undertakings' loss of turnover due to the COVID-19 outbreak or public measures taken to stop the spread of the virus (collectively "the COVID-19 situation").

3.2 Objective

- (7) The objective of the measure is to compensate for damages caused by the COVID-19 situation. The measure aims at securing employment and ensuring a faster recovery of the economy after the crisis.

3.3 Aid granting authority and national legal basis

- (8) The Norwegian Tax Administration (*Skatteetaten*) will administer the measure on behalf of the Norwegian Ministry of Finance.
- (9) The legal basis for the measure is set out in the Act on a temporary grant scheme for undertakings suffering a substantial loss of turnover⁵ and supplemented by Regulations adopted pursuant to this Act.

3.4 Duration

- (10) The measure is expected to enter into force on 17 April 2020 and will apply to loss suffered as from 1 March until 31 May 2020 included.

3.5 Budget

- (11) The budget is estimated not to exceed NOK 20 billion per month, resulting in a total estimated budget of NOK 50 billion.

3.6 Beneficiaries

3.6.1 General

- (12) Companies are eligible under the measure if they have suffered a decline of turnover of at least 30% per month as a consequence of the COVID-19 situation. As the wide-reaching restrictions in Norway were first introduced on 12 March,⁶ the 30% threshold is replaced by 20% for the month of March. The measure applies to the whole territory of Norway and is open to all sectors of the economy with certain exceptions.
- (13) The authorities measure the decline in turnover by comparing the actual turnover of the beneficiary during the month for which the support is sought, to the turnover of in a reference period. In order to reflect the beneficiary's expected earnings under normal circumstances and to prevent seasonal fluctuations in sales from

⁵ *Lov om midlertidig tilskuddsordning for foretak med stort omsetningsfall*. The Act has yet to be adopted.

⁶ Decision ref. [20/8069-3](#) by the Norwegian Directorate of Health of 12.3.2020.

influencing the numbers, the reference period is the same month the previous year adjusted using the growth rate from January/February 2019 to January/February 2020. The Ministry of Finance will issue regulations with more detailed rules on how to calculate the losses in sales. Companies that did not exist one year ago will use their turnover in January and February 2020 as a reference period.

- (14) Aid under the measure will not be granted to an applicant which is responsible for the damage suffered, and/or did not conduct its activities with due diligence or in compliance with applicable legislation, or did not take any measure within its responsibility to mitigate its damage.
- (15) In order to limit the aid scheme to undertakings conducting business in Norway, the Norwegian authorities have set a requirement under the scheme that beneficiaries must be registered in the Norwegian Register for Business Enterprises or in the Norwegian Register of Entities in case of sole proprietorship. All undertakings with operations in Norway are required to register in the Register of Business Enterprises or in the Register of Entities, as the case may be. The beneficiaries must have been registered by 1 March 2020. This requirement is set in order to limit abuse and fraud, by preventing undertakings from restructuring or establishing new entities in order to increase their aid from the measure.
- (16) In addition, all beneficiaries must be liable to pay tax in Norway. For companies taxed as separate entities, this means that the companies must be resident in Norway for tax purposes. For partnerships, only partners liable to pay tax in Norway for the income from the company will be covered by the measure. Branches of foreign companies are covered to the extent the business operated in Norway is tax liable in Norway. This requirement is set in order to ensure that support under the measure is proportionate to the income these companies generate in Norway.
- (17) Undertakings in difficulty, within the meaning of Article 2(18) of the [GBER](#),⁷ will not be excluded as such. Excluded are, however, entities not considered to be “financially healthy”. The Norwegian authorities define “financially healthy” as entities not subject to insolvency proceedings at the time of application and until payment is due. In addition, taxes and fees due before 29 February 2020 must have been paid and tax return and annual accounts for 2018 must have been submitted, as long as the undertaking was established at the time. Tax returns for VAT due in 2019 and until the grant scheme comes into force, must have been submitted. Undertakings must also be able to demonstrate their full ownership structure, including both direct and indirect ownership.
- (18) Non-Governmental Organizations (“NGOs”) are mainly non-economic entities. NGOs will retain governmental grants for their non-economic activities, regardless

⁷ 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 (OJ L 187, 26.6.2014, p. 1), referred to at point 1j of Annex XV to the EEA Agreement, as amended by Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating schemes for outermost regions and amending Regulation (EU) 702/2014 as regards the calculation of eligible costs (OJ L 156, 20.6.2017, p. 1), see Joint committee Decision No 185/2017.

of whether planned activities can or cannot be carried out as a result of regulations from the health authorities. Thus, the Norwegian authorities have explained that the non-economic activities of the NGO sector are mainly taken care of. However, the NGOs' economic activities may be affected by the COVID-19 situation. Therefore, the economic taxable activities of NGOs will be eligible under the measure.

- (19) Entities without employees are not eligible under the measure. Exceptions apply for sole proprietorships where the owner has the income from the sole proprietorship as its main income. The same exception applies to partnerships where income from the company is the main source of income for at least one of the partners. This requirement prevents the measure from benefitting shell companies with no actual economic activity.
- (20) The Norwegian authorities have excluded certain sectors from the measure for two reasons. First, sectors that are not directly affected by the COVID-19 situation, but where the companies may have suffered a loss in turnover for other reasons, are excluded. Second, beneficiaries of other sector-specific aid schemes that are deemed to cover their COVID-19 situation related needs, are excluded from the scope of the measure.

3.6.2 Sectors not affected and sectors with high fluctuations in turnover not due to the COVID-19 situation.

- (21) Companies engaged in petroleum extraction and production as well as production, transmission, distribution and trade of electric power, are excluded from the measure.⁸ Petroleum and hydroelectric power producers normally earn high profits based on Norway's endowment of natural resources. Both petroleum and power producers are subject to an additional tax rate on top of the ordinary corporate tax because of the extraordinary returns from utilisation of natural resources. The special tax systems for petroleum and hydropower also imply that there is considerable burden sharing between the producers and the state when profits fall. Even though petroleum and electricity producers are facing low prices, production has not fallen. Large price fluctuations in these industries are not uncommon and the COVID-19 situation is not considered by the Norwegian authorities to be the main reason for the recent fall in oil prices and electricity prices. Moreover, the revenue of power grid companies is regulated and they therefore do not face revenue loss over time as a result of the COVID-19 situation.
- (22) Financial institutions and companies whose main purpose is investment activities are not included in the scheme. The Norwegian authorities refer to the aim of the scheme in relation to the exclusion, which is to provide support in a situation where many undertakings suffer acute losses and will not be able to fulfil financial commitments. However, as for the exclusion of banking, credit and insurance undertakings, the Norwegian authorities assess these parts of the financial industry to be robust. According to the Norwegian authorities, activity in banking, finance and insurance services will not fall substantially and could possibly rise, as a result of the crisis. Losses suffered by banks and other financial institutions reflect losses suffered by their debtors and should not be covered twice. Due to the critical dependence on a functioning financial sector, the Norwegian

⁸ The exemption applies to all companies with activity that falls within the category 35.1 in Statistics Norway's list of industry groups SN2007.

authorities would still have to consider targeted measures to address acute risks of undertakings failing, due to acute loss, should such a situation nevertheless arise in these parts of the economy.

3.6.3 Sectors with sector-specific COVID-19 aid schemes

- (23) Sectors that can make use of sector-specific support schemes set up to remedy the consequences of the COVID-19 situation are excluded from the measure. This applies to private kindergartens and the airline industry. Private kindergartens are fully compensated for their loss of revenue in accordance with a decision by the Norwegian Government. The airline industry enjoys a separate aid scheme ensuring that airlines have access to liquidity.⁹
- (24) The Norwegian authorities have set up two aid schemes for activities in the culture sector¹⁰ and the sports and voluntary sector.¹¹ These schemes are limited to compensating undertakings engaging in cultural activities, as well as sports and voluntary organisations, for lost ticket sales for events that were planned to happen between 5 March and 30 April 2020, but were cancelled due to the COVID-19 situation. The aid is thus restricted to events and covers only a specific type of income from those events. Beneficiaries under these two schemes are therefore eligible for support under the measure. However, any aid received under the two schemes will be included in the beneficiary's reported turnover.

3.7 Eligible costs

- (25) The eligible costs are the documented loss of turnover.
- (26) Turnover is defined as income from sale of goods and services. This limits the turnover taken into account, in that it does not include income or returns from capital, real estate or other financial assets. This limitation is in line with the intention of the scheme to target support to companies facing weaker demand for their goods and services.

3.8 Aid intensity

- (27) The maximum aid intensity is 100%, meaning that the compensation can never exceed the nominal loss in turnover.

3.9 Compensation mechanism

- (28) In addition to the maximum aid intensity (see above), compensation also cannot exceed 90% of the unavoidable fixed costs of a beneficiary ordered to close, and 80% for all other beneficiaries.
- (29) Moreover, there must be a causal link between the COVID-19 situation and the loss of turnover. Any loss of turnover that is not caused by the COVID-19 situation, but is due to other reasons, cannot be compensated under the measure. The beneficiary must therefore confirm, under threat of sanctions for providing wrongful information, that the loss in turnover for which it claims compensation results from the COVID-19 situation.

⁹ ESA's [Decision 029/20/COL](#) of 30 March 2020 on COVID-19 Guarantee scheme for airlines.

¹⁰ ESA's [Decision 032/20/COL](#) of 3 April 2020 on COVID-19 Compensation scheme for the cancellation or postponement of cultural events.

¹¹ ESA's [Decision 033/20/COL](#) of 3 April 2020 on COVID-19 Compensation scheme for the cancellation or postponement of sports or volunteer events.

- (30) The aid granted to each beneficiary is calculated according to this formula:

$$\text{aid} = \text{aid intensity} \times \text{loss in turnover (NOK)}$$

- (31) The calculation of the amount of the aid takes into account the extent to which beneficiaries are affected by the COVID-19 situation through loss of turnover. Rather than a precise calculation of the net losses suffered by each company due to the COVID-19 situation, which is the actual damage, the Norwegian authorities base the calculation on a “fixed cost-to-turnover ratio”, which serves as a proxy.
- (32) Other public support received to cover the same eligible costs incurred, as a result of the COVID-19 situation, must be included in the relevant month’s turnover to avoid double compensation.
- (33) The aid intensity in the formula above is determined individually for each beneficiary according to this formula:

$$\text{aid intensity} = \text{adjustment factor} \times \frac{\text{unavoidable fixed costs} - \text{deduction}}{\text{pre} - \text{crisis turnover}}$$

- (34) The individual aid intensity is capped at 1 to ensure that compensation to any beneficiary does not exceed the loss in turnover. The aid intensity depends on the beneficiary’s post-deduction “fixed cost-to-turnover-ratio”, multiplied by an adjustment factor. The adjustment factor is set to 0.9 for companies that have been given a government order to close and 0.8 for other companies.
- (35) By taking into account the beneficiary’s “fixed cost-to-income ratio”, the compensation amount should reflect how vulnerable the beneficiary is to a decline in turnover. In other words, the calculation is designed to reflect the beneficiary’s need for support in order to overcome the economic consequences of the COVID-19 situation.
- (36) The deduction factor is set at NOK 0 for companies that have been ordered to close and NOK 10 000 for other companies.
- (37) The pre-crisis turnover component for the calculation of aid in one given month is the turnover of the corresponding month in 2019.
- (38) The adjustment factor and corresponding deductions entail that companies closed down by a government decision receive higher compensation than other companies do, all else equal. Also, compensation to companies closed down by government decision is capped at maximum 90% of their fixed costs. The same cap is 80% for other businesses.
- (39) Unavoidable fixed costs are costs that cannot be reduced in the short term in line with the level of activity and includes rent, the fixed cost part of lighting and heating, water and drainage, insurance, equipment, and net interest¹². The type of fixed costs that are included are those that are deemed to be relevant across all firms, although to a varying degree depending on the structure of the firm and the sector. Fixed costs must be tied to contractual obligations arisen prior to 1 March

¹² Net interest refers to interest costs net of interest income.

2020. This criterion will reduce possibilities to exploit the scheme by transforming variable costs to fixed costs through contractual rearrangements and make sure that the scheme will not induce new investments or activities that would not be economic without the scheme. Where costs stems from a contract that includes both a fixed and a variable element, only costs stemming from the fixed element of the contract can be included as unavoidable fixed costs.

- (40) In addition to the aid intensity-cap of 1 applicable in the formula above, the aid intensity also cannot exceed the following maximum limit:

$$\text{aid intensity} \leq \frac{\text{unavoidable fixed costs} + \text{net earnings before taxes}}{\text{turnover pre crisis}}$$

- (41) Where *net earnings before taxes* is a number derived from the financial statements for the last accounting period prior to the aid period, divided by the number of months that the accounting period covers. These safeguards help to ensure that the amount of aid does not exceed the net loss incurred by a beneficiary and that the aid does not leave a beneficiary in a better financial position than it would have been if the COVID-19 situation had not occurred.
- (42) There is a lower limit on payments set to NOK 5 000 per month.
- (43) There is also a maximum compensation, applicable to the group as a whole for groups, and to companies individually if they are not part of a group. A group can also choose to apply together as if the group were a single company. The upper limit is set at NOK 80 million per group or company, as the case may be, per month. Compensation up to NOK 30 million per month is awarded in full. Compensation in excess of NOK 30 million will be reduced by a factor of 0.5. As an example, a group or company that according to the aid formula is eligible for NOK 100 million in aid will only receive NOK 65 million (NOK 30 million + 0.5 x 70 million).
- (44) The payment made to the beneficiaries will be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage. If the aid is paid out before the insurance, the corresponding amount will be clawed back from the beneficiary.

3.10 Compensation procedure and control mechanism

- (45) The Norwegian Tax Administration will establish an automated process to accept and evaluate aid applications from impacted businesses. Potential beneficiaries may apply for compensation to cover loss incurred during the preceding month (i.e. one claim per month).
- (46) Applicants must provide all relevant information for assessing the aid. At a minimum, this will include information about current monthly sales, monthly sales in the comparable previous period and current (i.e. referring to the month for which support is claimed) unavoidable costs. They must also confirm that they are able to provide an audit certification from an accredited auditor or accountant upon request. If an application includes an incorrect basis or calculation for compensation, the application must be amended and corrected by the applicant. The automated assessment includes an evaluation of the credibility of claims, based on historical business information, including previously reported earnings

and costs. The assessment will further evaluate fixed expenses and revenues in historical figures against those in comparable industries, overall activity, whether the company has active employees, unsettled financial obligations, including fines and unpaid taxes, among other factors.

- (47) The automated system will include processes to detect unsubstantiated or fraudulent claims. Applications with substantial differences in previously reported financial details or significant deviations compared to applications from other companies in similar industries will be flagged for manual assessment.
- (48) The Norwegian Tax Administration will carry out risk-based *ex post* audits. Information gathered from the beneficiaries, combined with information already available within the Tax Administration, will be utilised for an analytically risk-based selection of undertakings to be audited. Risk indicators will be based on the specific conditions of this aid scheme and may include previously loss-making undertakings, business sectors that in general did not suffer substantial losses of turnover, etc.
- (49) Beneficiaries whose turnover is found to have declined less than reported at the time of the aid application will be required to repay the excess aid. In addition, administrative sanctions (of 30% or 60% reduction of the aid) may be imposed on the beneficiary, if the misreporting is deemed to be wilful or due to gross negligence.

4 Presence of state aid

- (50) 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.”

- (51) The qualification of a measure as aid within the meaning of this provision requires the following cumulative conditions to be met: (i) the measure must be granted by the state or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (52) The compensation envisaged by the measure will be paid from the state budget and therefore constitutes state resources within the meaning of Article 61(1) of the EEA Agreement. The measure is imputable to the State, as compensation under the measure is administered by the Norwegian Tax Administration, according to a legislative act adopted by the Norwegian Parliament.
- (53) The measure confers an advantage on the beneficiaries, as the compensation will relieve the beneficiaries from costs they would otherwise have to bear, as a result of the business operations. The advantage corresponds to the amount of compensation paid under the measure.
- (54) The measure is selective since it is only available to certain undertakings. Only undertakings, within the sectors covered, which have experienced at least 30%

loss in turnover, due to the COVID-19 situation in a specific period of time, are eligible for aid.

- (55) The beneficiaries receive an advantage that will improve their competitive position compared to that of undertakings with which they compete. The measure benefits undertakings active in sectors in which intra-EEA trade exists. The measure is therefore liable to distort competition and affect EEA trade.
- (56) Therefore, the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

5 Procedural requirements

- (57) 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."
- (58) The Norwegian authorities have submitted a notification of the aid measure and have not yet let the measure enter into force. 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

- (59) The Authority must declare state aid compatible with the functioning of the EEA Agreement under its Article 61(2)(b) provided that certain compatibility conditions are fulfilled. That provision reads: "The following shall be compatible with the functioning of this Agreement: aid to make good the damage caused by natural disasters or exceptional occurrences". ESA has no discretion in assessing the compatibility of aid that falls within this category and meets the terms of Article 61(2)(b) of the EEA Agreement.

6.2 COVID-19 as an exceptional occurrence

- (60) Neither the EEA Agreement, nor any EEA relevant legislation contains a precise definition of "exceptional occurrence". Article 61(2)(b) is an exception to the general principle, as stated in Article 61(1), which must be interpreted narrowly.¹³ For all measures taken under Article 61(2)(b), there must be a direct causal link between the aid granted and the damage resulting from the exceptional occurrence for each beneficiary and aid must be limited to what is necessary to make good the damage.
- (61) The characterisation of an event as being an exceptional occurrence is made by ESA on a case-by-case basis. The event must be: (i) unforeseeable or difficult to foresee, (ii) significant scale/economic impact, and (iii) extraordinary.¹⁴

¹³ Judgment of 11 November 2014, *Spain v Commission*, C-73/03, EU:C:2004:711, paragraph 37, and judgment of 23 February 2006, *Giuseppe Atzeni and others*, C-346/03 and C-529/03, EU:C:2006:130, paragraph 79.

¹⁴ Commission Decision in SA.56791 C(2020) 1982 final (Denmark), *Temporary wage-compensation scheme for self-employed financially affected by the COVID-19* (not yet published), paragraph 46; Commission Decision in SA.56774 [C\(2020\) 2294 final](#) (Denmark), *Compensation*

- (62) The following have been accepted as exceptional occurrences in the past: war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss.
- (63) On 9 March 2020, European Commission's President Ursula von der Leyen made a statement that companies affected by the COVID-19 outbreak would in principle be eligible for state aid under Article 61(2)(b). On 11 March 2020, the COVID-19 outbreak was classified as a pandemic by the World Health Organisation.¹⁵ On 12 March 2020, the Commission adopted a decision concluding that the COVID-19 outbreak qualifies as an exceptional occurrence for the purpose of Article 107(2)(b) TFEU, as it is an extraordinary, unforeseeable event having a significant economic impact.¹⁶
- (64) On this basis, ESA finds that the COVID-19 outbreak is an extraordinary, unforeseeable event of a significant scale and with a major negative impact on the economy.
- (65) Consequently, ESA considers the COVID-19 outbreak to be an exceptional occurrence within the meaning of Article 61(2)(b) of the EEA Agreement.

6.3 Causal link between the measure and COVID-19

- (66) As described in paragraph 3, the Norwegian authorities have adopted various measures to limit the spread of the virus.
- (67) These containment measures, as well as the pandemic itself, have an immediate impact on both demand and supply, and especially for those companies particularly exposed to the containment measures, result in a drastic reduction of their turnover compared to their normal operations at the same time in the preceding year. The subsequent actual damage of those companies is the difference between the profit/loss incurred in the new circumstances created by the COVID-19 situation and the profit/loss incurred before these events (net losses).
- (68) The Norwegian authorities have notified the measure as a response to the negative economic implications for businesses with the aim of compensating the damage incurred as a result of the COVID-19 situation.
- (69) In order to receive support under the measure, beneficiaries must confirm that their activities are reduced as a result of the COVID-19 situation. As part of the *ex post* controls, the Norwegian Tax Administration will require a justification of the causal link as part of the *ex post* audits.

for companies particularly exposed to COVID-19 outbreak, paragraph 35; Commission Decision in SA.32163 [C\(2011\) 5495 final](#) (Slovenia) *Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010*, paragraph 31.

¹⁵ [WHO Director Generals opening remarks at the media briefing on COVID-19 on 11 March 2020](#).

¹⁶ Commission Decision in SA.56791 [C\(2020\) 1982 final](#) (Denmark), *Temporary wage-compensation scheme for self-employed financially affected by the COVID-19*, paragraph 50; Commission Decision in SA.56774 [C\(2020\) 2294 final](#) (Denmark), *Compensation for companies particularly exposed to COVID-19 outbreak*, paragraph 39; Commission Decision in SA.56685 [C\(2020\) 1698 final](#) (Denmark) *Compensation scheme for cancellation of events related to COVID-19*, paragraphs 26–30.

- (70) Furthermore, the measure is of a limited duration and will only compensate the loss of turnover for a three-month period in which the containment measures preclude normal operations for most companies.
- (71) Therefore, there is a direct link between the aid and the damage caused by the COVID-19 outbreak.

6.4 Proportionality

- (72) In order to be compatible under Article 61(2)(b) of the EEA Agreement, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage, and should only make good the damage caused by the exceptional occurrence.
- (73) As described above, the actual damage of the companies affected by the COVID-19 situation is the difference between the profit/loss incurred in the circumstances created by the COVID-19 situation and the profit/loss the company otherwise would have had. In light of the exceptional circumstances, that is, the large amount of beneficiaries in need of aid, and the urgency in putting in place a support measure that is sufficiently simple to administer, ESA can accept the use of a proxy based on loss of turnover and the inability to cover fixed costs, given satisfactory safeguards. The following safeguards are to ensure that the under the measure does not exceed what is necessary to make good the damage.
- (74) First, compensation cannot exceed a beneficiary's nominal loss in turnover as defined above.
- (75) Second, the calculation of the aid amount reflects the beneficiary's actual need for support to overcome the economic consequences of the COVID-19 situation. The compensation will not exceed 90% of the unavoidable fixed costs for undertakings closed down by government decision, and 80% for all other companies.
- (76) Third, the aid is only applied for and granted after losses have actually been incurred, thereby removing the uncertainties related to using estimates. The applicant must provide all relevant information to assess the claim in the automated system, which will test the credibility of the information. The automated system will include processes to detect unsubstantiated or fraudulent claims, which will be flagged for manual assessment.
- (77) Fourth, the Norwegian Tax Administration will carry out risk-based *ex post* audits rooted in a set of risk indicators defined upfront. If the Norwegian Tax Administration finds that the aid was incorrectly awarded, it will require the recipient to repay the aid in order to recover any overcompensation. In addition, administrative sanctions may be imposed on the beneficiary if the misreporting is deemed to be wilful or due to gross negligence.
- (78) Fifth, beneficiaries under the measure must confirm that their activities are reduced as a result of the spread of the virus or the policy reactions to the virus, so that the losses for which they claim aid have a causal link to the COVID-19 outbreak.
- (79) Sixth, the payment made to beneficiaries shall be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage. If the aid is paid out before other relevant payments, the Norwegian authorities will recover

that amount from the beneficiary. Moreover, aid is excluded for any applicant who is responsible for the damage suffered, and/or did not conduct its activities with due diligence or in compliance with applicable legislation, or did not take any measure within its responsibility to mitigate its damage.

- (80) Seventh, other public aid received to cover the same eligible costs incurred as a result of the COVID-19 outbreak is included in the month's turnover in order to avoid double compensation.
- (81) The Norwegian authorities have designed the measure in a non-discriminatory way, targeting the undertakings that are most affected by the COVID-19 outbreak, with more than 30% decline in turnover in the relevant period. The measure is, in principle, open to all sectors considered by the Norwegian authorities to be affected economically, only excluding sectors that are not considered to fall within the logic of the scheme, or which benefit from other COVID-19 measures.
- (82) The measure aims at compensating companies carrying on economic activity in Norway, for the damage suffered. Therefore, only undertakings registered in the Register of Business Enterprises or in the Register of Entities by 1 March 2020 are eligible for aid.¹⁷ This requirement serves to limit abuse and fraud by preventing companies from restructuring or establishing new entities in order to increase the aid from the measure. In the same vein, eligible undertakings must also be liable to pay tax in Norway. This requirement is consistent with the objective of the scheme as it ensures that the aid granted is proportionate to the economic activity that is allocated to Norway for the purposes of taxation.
- (83) Therefore, ESA finds the scope of the measure consistent with its logic and concludes that the measure is proportionate under the circumstances given by the exceptional occurrence that is the COVID-19 outbreak.

6.5 Cumulation

- (84) Aid can be cumulated with aid received under other aid schemes covering the same eligible costs up to 100% of the damage incurred. To ensure that state aid under the measure does not lead to overcompensation, the beneficiaries must declare other aid received covering the same eligible costs.

6.6 Reporting and transparency

- (85) The Norwegian authorities committed to provide a report no later than one year after the date of ESA's decision, specifying the amount of compensation and recoverable advances granted.
- (86) The Norwegian authorities will publish information about the individual aid awards.

7 Conclusion

- (87) ESA considers that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. Since no doubts are raised that this aid is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(2)(b), ESA has no objections to the implementation of the measure.

¹⁷ Commission Decision in SA.56791 [C\(2020\) 1982 final](#) (Denmark), *Temporary wage-compensation scheme for self-employed financially affected by the COVID-19*, paragraph 17.

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

For the EFTA Surveillance Authority,

Yours faithfully,

Bente Angell-Hansen
President
Responsible College Member

Frank J. Büchel
College Member

Högni Kristjánsson
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Carsten Zatschler
Countersigning as Director,
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*This document has been electronically authenticated by Bente Angell-Hansen,
Carsten Zatschler.*