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Decision No 026/22/COL

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

**Subject: COVID-19 Renewal of and amendments to the aid scheme for lost inventory**

## 1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the notified renewal of and amendments to the aid scheme for lost inventory (“the measures”), it considers that the measures constitute state aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections<sup>1</sup> to them, as they are 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) By Decision No [051/21/COL](#) of 20 May 2020, ESA approved the COVID-19 aid scheme for lost inventory (“the lost inventory scheme” or just “the scheme”) under Article 61(2)(b) of the EEA Agreement (“the initial decision”). The scheme covered lost inventory suffered due to the national and local bans on serving alcohol, and the decision in Oslo to close restaurants, bars, etc., as well as non-essential shops. The scheme covered losses suffered during the following periods: (i) November to December 2020; (ii) January to February 2021; and (iii) March to April 2021.<sup>2</sup> The budget for the scheme was NOK 25 million (approximately EUR 2.5 million).
- (3) By Decision No [121/21/COL](#) of 10 June 2021, ESA approved amendments to the scheme (“the amending decision”). According to the amended scheme, business in the hospitality sector could be compensated only if they had to close during the period of the ban due to their operations becoming unprofitable. ESA also approved an increased budget to a total of NOK 30 million (approximately EUR 3 million). That scheme expired on 31 December 2021.

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<sup>1</sup> 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.

<sup>2</sup> See the initial decision, paragraph 13.

- (4) On 27 January 2022, the Norwegian authorities notified a renewal of the COVID-19 aid scheme for lost inventory with certain amendments (“the renewed scheme”).<sup>3</sup>

### 3 Description of the measures

#### 3.1 Background

- (5) The COVID-19 outbreak and the containment measures adopted in response to the pandemic have had a significant negative impact on the Norwegian economy. After a period of easing pandemic pressure and promising signs of economic recovery, the latest and unprecedented spike in infections, and the looming threat of an even more transmissible virus in the form of the omicron variant, have resulted in new containment measures to counteract the spread of the COVID-19 outbreak.
- (6) On 15 December 2021, the Norwegian authorities introduced new containment measures aimed at reducing the spread of the omicron variant. Between 15 December 2021 and 13 January 2022, undertakings in the hospitality sector with a licence to serve alcohol
- could not exercise their licence,
  - had to register contact information for guests who agreed to it,
  - had to ensure that there was seating for all guests,
  - were not allowed to deliver catering for private gatherings with more than 20 people indoors or 50 people outdoors.<sup>4</sup>
- (7) As a result of these restrictions, many undertakings in the hospitality sector were unable to shift their inventory.
- (8) In addition, the Norwegian authorities also re-introduced various general restrictive measures. Specifically, undertakings in the hospitality sector such as restaurants, cafés, bars, etc., had to ensure that
- guests and staff kept at least a one-metre distance to others than people in the same household,
  - that there was at least a one-metre distance between the seats upon guest arrival,
  - that routines for good hygiene, good cleaning and ventilation were in place.
- (9) The Norwegian authorities consider it necessary to renew the COVID-19 aid scheme for lost inventory to curb the negative impact of the new restrictive measures that were imposed on the hospitality sector.
- (10) Restrictions were partially lifted on 13 January 2022 and the total ban on alcohol was removed.<sup>5</sup> Following the lifting of the total alcohol ban, businesses have

<sup>3</sup> Document Nos 1265697 and 1265695.

<sup>4</sup> *Forskrift om endring i forskrift 27. mars 2020 nr. 470 om smitteverntiltak mv. ved koronautbruddet (covid-19-forskriften)* ([FOR-2021-12-14-3504](#)).

<sup>5</sup> *Forskrift om endring i forskrift 27. mars 2020 nr. 470 om smitteverntiltak mv. ved koronautbruddet (covid-19-forskriften)* ([FOR-2022-01-13-57](#)).

resumed their activity, and no businesses are currently closed down due to the current governmental containment measures.

### 3.2 The notified measures

- (11) The lost inventory scheme was described in the initial decision and the amending decision. The Norwegian authorities now propose to renew the scheme, with certain amendments.
- (12) First, the Norwegian authorities propose a renewal of the scheme for the period from December 2021 to February 2022. The scheme compensates losses that originated in the periods from 15 December to 31 December 2021 and 1 January to 13 January 2022.<sup>6</sup> Undertakings will also be eligible for aid if the same containment measures are re-introduced within the duration of the scheme. Beneficiaries may apply for aid until 15 May 2022.
- (13) The approved budget in the amending decision was NOK 30 million (approximately EUR 3 million). The Norwegian authorities have informed ESA that NOK 52 million have been paid under the scheme. The budget for the renewed scheme is estimated at NOK 28 million (approximately EUR 2.8 million). Therefore, the revised budget for the scheme is NOK 80 million (approximately EUR 8 million).
- (14) Further, the Norwegian authorities have clarified that undertakings that charitably donate, in whole or in part, the inventory that would otherwise have perished are nevertheless eligible to have their losses compensated under the scheme. According to the Norwegian authorities, there is no economic incentive to give away the food. On the contrary, to give away the food rather than destroying it, entails that the donator has to pay duties like value added tax. The donator will also have to register the donation as income, which may add to its surplus tax. In order to avoid unnecessary food waste and reduce climate footprint, the Norwegian authorities consider that the scheme should not disincentivize donating such food rather than destroying it.
- (15) The Norwegian authorities will also introduce a new safeguard for avoiding overcompensation. They acknowledge that undertakings may suffer some inventory loss also in the normal course of business, even absent the restrictions. This will be taken into account in the following way. Each individual applicant shall deduct the relevant normal inventory loss, based on its historic rate of inventory waste. The beneficiaries can apply different historic rates of loss for different product categories. For example, if normal inventory loss on beer on tank differs from normal inventory loss of fresh produce, this can be taken into account when calculating how much to deduct in the application for aid. An accredited accountant or auditor shall verify that the information is correct before the applicant submits the application for aid. Each applicant must keep documentation on the calculation of the inventory loss applied for, including how much normal inventory loss was deducted. Applicants subject to *ex post* control have to present the documentation.

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<sup>6</sup> Undertakings with at least 30% loss of turnover in December or in January qualify for compensation for the relevant days in December or January, when the measures were in force.

- (16) The relevant historic rate of loss is the rate of loss in the last pre-pandemic equivalent period. If the applicant cannot document the relevant historic rate of loss, the deduction is set to 7%.<sup>7</sup>

#### **4 Presence of state aid**

- (17) Article 61(1) of the EEA Agreement reads as follows: “Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”
- (18) 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.
- (19) ESA has concluded that the scheme constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.<sup>8</sup> This assessment is not altered by the renewal of the scheme with proposed amendments. On this basis, ESA concludes that the measures constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

#### **5 Lawfulness of the aid**

- (20) 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.”
- (21) The Norwegian authorities have notified the measures and have yet to let them enter into force. In this respect, they have complied with the obligations under Article 1(3) of Part I of Protocol 3.
- (22) ESA notes however that the Norwegian authorities have breached the obligations under Article 1(3) of Part I of Protocol 3 when they exceeded the budget of the inventory scheme, see paragraph (13) above.

#### **6 Compatibility of the aid**

- (23) ESA shall declare state aid compatible with the functioning of the EEA Agreement under its Article 61(2)(b), provided that certain compatibility conditions are fulfilled. This provision reads as follows: “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

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<sup>7</sup> The deduction of 7% is based on the findings in the following report: *Stensgård, A.E. et al. (2020). Matsvinn i Norge - Rapportering av nøkkeltall 2015-2019. Norsus (Norsk institutt for bærekraftsforskning) rapport OP.51.20*. According to the report, the average waste of food in hotels, restaurants etc. is 7%.

<sup>8</sup> Initial decision, Section 4, amending decision, Section 4.

compatibility of aid that falls within this category and meets the terms of Article 61(2)(b) of the EEA Agreement.

- (24) For all measures taken under Article 61(2)(b), there must be an unbroken causal link between the exceptional occurrence and the damage. The aid must compensate for damage directly caused by the COVID-19 outbreak, such as damage directly caused by restrictive measures precluding the beneficiary, *de jure* or *de facto*, from operating its economic activity or a specific and severable part of its activity.<sup>9</sup>
- (25) The aid must also be limited to what is necessary to make good the damage suffered.<sup>10</sup>
- (26) In the amending decision (paragraphs (17) to (20)), ESA concluded that there was an unbroken causal link between the COVID-19 pandemic and the alcohol ban, and the damage suffered by undertakings in the hospitality sector in the form of lost inventory. The alcohol ban is a restrictive measure precluding certain undertakings from operating a specific and severable part of their economic activities (i.e. serving alcohol). The alcohol ban has also led to undertakings having to close down altogether, because the alcohol ban has made it unprofitable to stay open. In this case, the undertaking also qualifies for having any perished food compensated. In these cases, the alcohol ban *de facto* prevents some undertakings in the hospitality industry from operating their economic activity. The alcohol ban was re-introduced and was in force during the whole period in which losses are compensated under the scheme.
- (27) During that period, the Norwegian authorities will only compensate perished alcohol to the extent that undertakings were actually subject to the alcohol ban, and all perishable inventory including food, only to the extent that the undertaking documents that it had to close down because the alcohol ban made it unprofitable to stay open. On this background, ESA concludes that there continues to be an unbroken causal link between the COVID-19 outbreak and the alcohol ban introduced to counter the effects of the pandemic and the lost perishable inventory compensated under the renewed scheme.
- (28) The compatibility assessment is unaltered by the clarification provided by the Norwegian authorities that undertakings can benefit from the scheme if they donate all or parts of the food that would otherwise have perished. Undertakings that choose to use the option to donate the food that would otherwise have perished do not incur any savings in that respect (i.e. this does not reduce the damage). There is even an economic incentive against donating food in the Norwegian tax system, which results in higher taxes compared to throwing the food away. Therefore, this possibility under the scheme does not increase the likelihood of overcompensation.

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<sup>9</sup> See paragraph 15bis of the 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 91, 20.3.2020, p. 1, amended five times, (i) on 3.4.2020, OJ C 112, 4.4.2020, p. 1, (ii) on 8.5.2020, OJ C 164, 13.5.2020, p. 3, (iii) on 29.6.2020, OJ C 218, 2.7.2020, p. 3, (iv) on 13.10.2020, OJ C 340, 13.10.2020, p. 1, and (v) on 28.01.2021, OJ C 34, 01.02.2021, p 6 (“the Temporary framework”).

<sup>10</sup> Judgment of 17 February 2021 in *Ryanair v Commission*, T-259/20, EU:T:2021:92, paragraph 25.

- (29) In addition, the Norwegian authorities have included an additional safeguard to strengthen the link between the alcohol ban introduced to counter the COVID-19 outbreak and the lost inventory even further by requiring that each individual applicant shall deduct the relevant normal inventory loss, based on its historic rate of inventory waste, as described in paragraphs (15) and (16) above. These new amendments further strengthen the conclusion that the aid granted under the renewed scheme is in line with Article 61(2)(b), strengthening the direct link and adding additional safeguards to prevent overcompensation.
- (30) The same safeguards and control mechanisms included in the lost inventory scheme will continue to apply under the renewed scheme, which also includes additional safeguards as outlined above. Importantly, undertakings continue to be eligible for aid only to the extent that they are covered by the relevant containment measures (either alcohol ban or full closure<sup>11</sup>), and only in the periods when the relevant restrictions applied to them. As established in the initial decision (paragraphs (19), (26), (29) and (30)) and confirmed in the amending decision (paragraph (22)), ESA therefore finds that the renewed scheme includes sufficient safeguards and control mechanisms during its entire duration, to ensure that the aid only covers damage caused by the measures to stop the spread of COVID-19, and therefore that the aid is proportionate.
- (31) Furthermore, the revised budget of the scheme does not affect the compatibility of the measures.
- (32) Accordingly, ESA considers that the renewal of and amendments to the scheme are compatible with Article 61(2)(b) of the EEA Agreement.

## 7 Conclusion

- (33) On the basis of the foregoing assessment, ESA considers that the measures constitute state aid with the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that this aid is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(2)(b), it has no objections to the implementation of the measure.
- (34) The Norwegian authorities have confirmed that the notification does not contain any business secrets or other confidential information that should not be published.

For the EFTA Surveillance Authority,

Yours faithfully,

Arne Røksund  
President  
Responsible College Member

Stefan Barriga  
College Member

Árni Páll Árnason  
College Member

Melpo-Menie Joséphidès

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<sup>11</sup> In the current period in which losses are compensated, December to January, no undertakings have been ordered to close down. If such restrictions are introduced within the duration of the scheme, so by the end of February, the affected undertakings would be eligible for compensation for their lost inventory on the same conditions as under the first inventory scheme.

Countersigning as Director,  
Legal and Executive Affairs

*This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.*