

Ministry of Trade, Industry and Fisheries  
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Norway

**Subject: COVID-19 aid scheme for lost inventory**

## 1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the notified aid scheme for lost inventory (“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<sup>1</sup> to the measure, 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 19 May 2020.<sup>2</sup>

## 3 Description of the measure

### 3.1 Background

- (3) The COVID-19 outbreak poses a serious hazard to life and health. To counteract the outbreak, the Norwegian authorities have implemented strong preventative public health measures. The containment measures have included social distancing measures, restrictions on public gatherings and events, travel restrictions, advice against non-essential travel, advice on limiting social contacts, quarantine requirements and lockdowns.
- (4) The COVID-19 outbreak has also affected the Norwegian economy severely. As of 13 April 2021, 208 500 people were registered as fully or partially unemployed, amounting to 7.4% of the total workforce. The unemployment rate has doubled since February 2020, before the pandemic.<sup>3</sup>
- (5) To combat the spread of COVID-19, the Norwegian authorities have introduced numerous restrictive measures affecting restaurants, cafés, bars and hotels (hereinafter “the hospitality industry”), and flower/plant retailers, including:
- (i) A nationwide ban on serving alcohol in restaurants, cafés, bars, etc.<sup>4</sup> The ban was lifted on 16 April 2021.<sup>5</sup>

<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> Documents No 1202270 and 1202268.

<sup>3</sup> <https://www.nav.no/no/nav-og-samfunn/statistikk/arbeidssokere-og-stillinger-statistikk/nyheter/3-200-faerre-arbeidssokere-enn-for-paske>.

<sup>4</sup> Forskrift 24. mars 2021 nr. 840 om endring i covid-19-forskriften ([FOR-2021-03-24-840](#)).

<sup>5</sup> Forskrift 13. april 2021 nr. 1143 om endring av covid-19-forskriften ([FOR-2021-04-13-1143](#)).

- (ii) Various local restrictions on serving alcohol in restaurants, cafés, bars, etc., remain.<sup>6</sup>
- (iii) Closing of restaurants, cafés, bars, etc., in Oslo.<sup>7</sup>
- (iv) Closing of non-essential shops (including flower retailers) in Oslo.

### 3.2 Objective

- (6) Due to COVID-19 restrictions adopted by the Norwegian authorities, the hospitality industry across Norway has faced limitations or suspension of activities. As a consequence, undertakings in the hospitality industry have been unable to shift their inventory. The inventory is perishable and can only be sold for a limited time.
- (7) The same applies to flower/plant retailers. As flowers and plants are also perishable, retailers that have faced limitations or suspension of activities have been unable to sell their inventory.
- (8) The objective of the measure is to compensate the hospitality industry and flower/plant retailers for loss of inventory due to the restrictive measures imposed.
- (9) Inventory is defined as: (i) fresh produce, frozen foodstuff and beverages (that cannot not be stored for longer periods), or (ii) flowers/plants.

### 3.3 National legal basis

- (10) On 23 February 2021, the Norwegian Parliament approved the budget for the measure by adopting the Government's amendments to the budget proposition, Prop. 79 S (2020–2021).<sup>8</sup> The legal framework for the measure will be set out in the amended Regulation complementing and executing the Act on a temporary aid scheme for undertakings with substantial loss in turnover after August 2020.<sup>9</sup>

### 3.4 Aid granting authority

- (11) The measure will be administered by [Brønnøysund Register Centre](#). The Brønnøysund Register Centre is a Government body under the supervision of the Ministry of Trade, Industry and Fisheries.

### 3.5 Beneficiaries

- (12) The beneficiaries eligible for aid under the measure are: (i) restaurants, (ii) cafés, (iii) bars, (iv) hotels with restaurants offering food-service to customers other than guests of the hotel, and (v) flower/plant retailers. The beneficiaries must have suffered a decline in turnover of at least 30% in the relevant compensation period.
- (13) Each compensation period consists of a two-month period, meaning that eligible beneficiaries must have suffered at least a 30% decline in turnover in a two-month

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<sup>6</sup> Similar prohibitions have been in place in other municipalities on various times, for example in [Nordre Follo county](#), Bergen municipality, etc.

<sup>7</sup> *Forskrift 10. desember 2020 nr. 2660 om forebygging av koronasmitte, Oslo Kommune, Oslo (FOR-2020-12-10-2660)*, see also: <https://www.oslo.kommune.no/koronavirus/rad-og-regler-i-oslo/servering-og-skjenking/>.

<sup>8</sup> <https://www.stortinget.no/no/Saker-og-publikasjoner/Vedtak/Vedtak/Sak/?p=83210>.

<sup>9</sup> *Forskrift 21. Desember 2021 nr. 3085 til utfylling og gjennomføring av lov om midlertidig tilskuddsordning for foretak med stort omsetningsfall etter august 2020 (FOR-2020-12-21-3085)*. The amending regulation has no reference number yet.

period. The relevant periods are: (i) November to December 2020; (ii) January to February 2021; and (iii) March to April 2021.

- (14) The beneficiaries must be registered in the Norwegian Register for Business Enterprises or in the Norwegian Register of Entities in case of sole proprietorship. The beneficiaries must also be liable to pay tax in Norway.
- (15) The applicants must have employees, except for sole proprietorships where the owner has the income from the sole proprietorship as their 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. The Norwegian authorities have explained that the requirement is set to prevent the measure from benefitting shell companies with no actual economic activity.
- (16) Undertakings in difficulty, within the meaning of Article 2(18) of the General Block Exemption Regulation (“[GBER](#)”),<sup>10</sup> will not be excluded as such. However, entities not considered to be “financially healthy” are excluded. As “financially healthy”, the Norwegian authorities define entities not subject to insolvency proceedings at the time of application and until the payment under the measure is due. In addition, taxes and fees due before 29 February 2020 must have been paid and tax returns and annual accounts for 2019 must have been submitted, provided the undertaking was established at the time.

### **3.6 Aid instrument and eligible costs**

- (17) The aid will be granted in the form of direct grants.
- (18) The eligible costs under the measure will be the purchase costs of lost inventory. The lost inventory must consist of: (i) fresh produce, frozen foodstuffs and/or beverages that cannot be stored for longer periods, or (ii) flowers/plants.
- (19) In order to be eligible:
  - The beneficiaries in the hospitality industry must document that the produce have perished and that no or limited alternative applications existed.
  - The flower/plant retailers must document that the flowers/plants could not be sold due to perishability.
  - The loss of inventory must be caused by either a decision from the authorities to temporarily close the business or a ban on serving alcohol.
  - The beneficiaries in the restaurant sector must document that they have been subject to a national/regional ban on serving alcohol and/or closure of

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<sup>10</sup> 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, and Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments (OJ L 215, 7.7.2020, p. 3), see Joint Committee Decision No 115/2020.

business at the time the foodstuffs became unusable as food, and this must be confirmed by an auditor or accredited accountant.

- The flower/plant retailers must document or make probable that the loss of inventory is caused by a decision to close their business.

(20) As regards the definition of “closed” under the measure, the following will apply:

- For the hospitality industry, undertakings will be considered as closed, if they were not allowed to serve guests in the restaurant facilities. Restaurants that have offered take-away services may therefore still be eligible under the measure.
- The same definition will apply for flower/plant retailers. Some flower/plant retailers have offered flowers or plants where customers may pick up purchased flowers or plants outside the shop. These retailers will also be considered as closed for the purposes of this measure, if they were otherwise obliged to close their business.

(21) If there has only been a ban on serving alcohol, but the hospitality industry could offer food, the undertakings will only be compensated for the unsellable alcoholic beverages.

(22) Undertakings that chose to temporarily close, but in principle could have stayed open, are not eligible for aid.

### **3.7 Aid award procedure and control mechanism**

(23) Companies are eligible under the measure, if they have suffered a decline in turnover of at least 30% in relevant time period (see paragraph (13) above), as a consequence of the restrictive measures adopted by the Norwegian authorities.

(24) Aid will not be granted to applicants responsible for the damage suffered. That includes those that have not conducted their activities with due diligence or in compliance with applicable legislation, or who did not take appropriate measures to mitigate their damage. An accredited accountant must verify this information.

(25) In addition to the documentation mentioned in paragraph (19) above, applicants must submit tax returns for VAT due in 2019 and until the date when the measure enters into force. Undertakings must also be able to demonstrate their full ownership structure, including both direct and indirect ownership.

(26) The applicants must submit a statement from an accredited accountant or auditor confirming that all the criteria for falling within the scope of the measure are met.

(27) Payments made to beneficiaries shall be net of any amount obtained from insurance, litigation, arbitration or any other source for the same damage. If the aid is paid out before the insurance, the insurance amount will be recovered from the beneficiary to avoid overcompensation.

- (28) The aid will be granted for costs exclusive of VAT, as the beneficiaries may deduct VAT.<sup>11</sup> Furthermore, the aid will be granted exclusive of other excise duties, as excise duties on goods that are destroyed will be refunded.<sup>12</sup>

### 3.8 Commitments from the Norwegian authorities

- (29) The Norwegian authorities commit to carry out *ex post* controls by calculating the actual overall net losses (damage) and *ex post* comparing these losses to the overall compensation paid under all COVID 19 measures under Article 61(2)(b) of the EEA Agreement and under the [Temporary Framework](#) for State aid measures to support the economy in the current COVID-19 outbreak<sup>13</sup> with identifiable eligible costs. The precise methodology for such an *ex post* control will be defined later and sent to ESA for approval before 31 December 2021.
- (30) The Norwegian authorities also commit to ensure that beneficiaries repay any overcompensation, should the *ex post* assessment show that the total aid received by an individual beneficiary to compensate the damage caused by the COVID-19 outbreak exceeds the total amount of the damage suffered by the beneficiary.

### 3.9 Aid intensity and cumulation

- (31) The aid intensity is 100%.
- (32) The aid will be calculated based on the purchase costs of the inventory, exclusive of VAT and excise duties.
- (33) The Norwegian authorities confirm that aid granted under this measure cannot be cumulated with other state aid granted for the same eligible costs.

### 3.10 Budget and duration

- (34) The measure is expected to enter into force on 9 June 2021.
- (35) The Norwegian authorities have confirmed that no aid will be granted under the measure after 31 December 2021.
- (36) The beneficiaries may apply for aid until 15 October 2021.
- (37) The budget is estimated to be 25 million NOK (approximately EUR 2.5 million).

## 4 Presence of state aid

- (38) 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

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<sup>11</sup> See Section 3-1(12) of the Regulation to the [Act on a temporary grant scheme for undertakings](#). A similar rule will apply.

<sup>12</sup> <https://www.skatteetaten.no/bedrift-og-organisasjon/avgifter/saravgifter/rapportere/destruere-varer/midlertidig-lettelse-i-kravene-til-tilintetgjoeringdestruering-av-varer/>.

<sup>13</sup> 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 \(“the Temporary Framework”\)](#).

shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”

- (39) 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.
- (40) The measure is financed from the State budget and is therefore provided through State resources within the meaning of Article 61(1) of the EEA Agreement. The measure is imputable to the State, as the compensation is administered by the Brønnøysund Register Centre, a Government body under the authority of the Ministry of Trade, Industry and Fisheries.
- (41) The measure provides certain undertakings an advantage in the form of direct grants. Therefore, the measure confers an economic advantage on the beneficiaries, which they would not have obtained under normal market conditions.
- (42) The measure is selective as it is only available to undertakings within certain economic sectors in Norway, specifically the hospitality industry and flower/plant retailers.
- (43) The beneficiaries of the measure are active in sectors subject to intra-EEA competition and trade. Therefore, the measure is liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.
- (44) In light of the above, ESA concludes that the measure meets the cumulative conditions under Article 61(1) of the EEA Agreement and therefore constitutes state aid within the meaning of this provision.

## **5 Aid scheme or individual aid**

- (45) ESA notes that the legal basis of the measure is an act which does not require further implementing measures for the granting of the aid, and which identifies the beneficiaries in a general and abstract manner.<sup>14</sup> The aid is therefore granted on the basis of an aid scheme.

## **6 Lawfulness of the aid**

- (46) 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.”
- (47) The Norwegian authorities have notified the measure and have yet to let it enter into force. They have therefore complied with their obligations under Article 1(3) of Part I of Protocol 3.

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<sup>14</sup> See Article 1(d) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

## 7 Compatibility of the measure

### 7.1 Introduction

- (48) ESA 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.
- (49) 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 the aid must be limited to what is necessary to make good the damage.

### 7.2 COVID-19 as an exceptional occurrence

- (50) Neither the EEA Agreement nor any EEA relevant legislation contains a precise definition of “exceptional occurrence”.<sup>15</sup> Article 61(2)(b) is an exception to the general principle, laid down in Article 61(1), which must be interpreted narrowly. The characterisation of an event as an exceptional occurrence is made by ESA on a case-by-case basis. The event must be: (i) unforeseeable or difficult to foresee,<sup>16</sup> (ii) of a significant scale/economic impact,<sup>17</sup> and (iii) extraordinary.
- (51) 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 107(2)(b) of the Treaty on the Functioning of the European Union (“TFEU”). On 11 March 2020, the COVID-19 outbreak was classified as a pandemic by the World Health Organisation. On 12 March 2020, the European Commission adopted a decision concluding that the COVID-19 pandemic qualifies as an exceptional occurrence for the purpose of Article 107(2)(b) TFEU, which corresponds to Article 61(2)(b) of the EEA Agreement, as it is an extraordinary, unforeseeable event having a significant economic impact.<sup>18</sup> Moreover, on 17 February 2021, the General Court confirmed that the COVID-19 pandemic and the restrictions imposed constituted an exceptional occurrence.<sup>19</sup>
- (52) The spread of COVID-19 ultimately resulted in far-reaching disruption of various economic sectors. That disruption was therefore clearly outside the normal functioning of the market. In order to avoid an exponential increase in the number of cases, accompanied by social alarm and severe economic consequences, containment measures needed to be adopted. Consequently, governments all over the world adopted various measures that aimed to limit the spread of the

<sup>15</sup> See also Commission Decision in SA.56685 [C\(2020\) 1698 final](#) (Denmark) Compensation scheme for cancellation of events related to COVID-19, paragraph 24.

<sup>16</sup> 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.

<sup>17</sup> Commission Decision in SA.33487 [C\(2012\) 2447 final](#) (Hungary) Agricultural and fisheries aid to compensate for damage due to exceptional occurrence, paragraph 36.

<sup>18</sup> Commission Decision in SA.56685 [C\(2020\) 1698 final](#) (Denmark) Compensation scheme for cancellation of events related to COVID-19, paragraphs 26–30.

<sup>19</sup> Judgment of 17 February 2021 in *Ryanair v Commission*, T-259/20, [EU:T:2021:92](#), paragraphs 26 to 27.

coronavirus, e.g. travel restrictions for non-essential travels, closure of borders, closure of nonessential shops, obligation for companies to organise working from home for every position where this is possible, and various social distancing measures.

- (53) In view of the above, the COVID-19 pandemic and the restrictive measures imposed qualify as an exceptional occurrence, as it was not foreseeable and is clearly distinguishable from ordinary events, by its character and its effects on the affected undertakings and the economy in general, and therefore falls outside the normal functioning of the market.
- (54) Consequently, ESA considers that the COVID-19 pandemic and the corresponding restrictive measures imposed qualify as an exceptional occurrence within the meaning of Article 61(2)(b) of the EEA Agreement.

### **7.3 Causal link between the exceptional occurrence and the measure**

- (55) 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>20</sup>
- (56) As described in section 3.1, the COVID-19 outbreak resulted in the Norwegian authorities introducing a series of virus containment measures that still significantly limit the restaurant service and flower retailers. These restrictive measures have an immediate impact on both demand and supply for undertakings in these sectors.
- (57) The beneficiaries of the measure must have had an explicit legal obligation to close down their operations for the period covered by the measure to receive compensation for losses. Such obligations must have resulted in a significant reduction in their turnover compared to the reference period.
- (58) In order to ensure that the compensation only covers losses that are a direct consequence of the restrictions, the beneficiaries will have to document: (i) that the produce or flowers/plants have perished and that no or limited alternative applications existed, and that the produce or flowers/plants have been destroyed; (ii) the purchase cost; and (iii) that they were subject to a ban or restriction. An accredited accountant will have to verify this information. In ESA's view, these requirements will ensure that only losses that are a direct consequence of the restrictions are compensated.
- (59) Furthermore, only the beneficiaries that establish a direct link between the losses from the perishable inventory and measures taken by the authorities, as a consequence of the COVID-19 pandemic, are entitled to compensation.
- (60) Accordingly, the requirement of a causal link between the exceptional occurrence and the measure is fulfilled.

### **7.4 Proportionality**

- (61) 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

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<sup>20</sup> See paragraph 15bis of the Temporary Framework.



must not result in overcompensation of damage and should only make good the damage caused by the exceptional occurrence.

- (62) Under the measure, eligible costs will be the purchase costs of lost inventory. Losses fully or partially covered by the beneficiaries' insurance or other means cannot be compensated (see paragraph (27) above). Furthermore, the measure requires a statement from an accredited accountant or auditor, confirming the information provided by the beneficiary and that all the criteria, in order to fall within the scope of the measure, are fulfilled.
- (63) ESA also notes the additional commitment of the Norwegian authorities to design and validate with ESA a precise methodology for the *ex post* control, to calculate the actual damage and avoid any overcompensation. The Norwegian authorities have committed to recover any overcompensation detected.
- (64) ESA considers that, in light of these requirements and limitations set out by the Norwegian authorities, compensation under the measure will not exceed what is necessary to make good the actual damage suffered from the COVID-19 outbreak and related measures by the Norwegian authorities.
- (65) Moreover, the measure does not allow cumulation with other aid schemes, covering the same losses, such as the COVID-19 compensation schemes (see paragraph (33)). In addition, undertakings that are considered to be not "financially healthy" are not entitled to compensation under the measure (see paragraph (16) above).
- (66) On this basis, ESA concludes that the methodology used to calculate the damage is appropriate, and that there are sufficient safeguards in place to prevent the risk of overcompensation. Consequently, ESA concludes that the measure is proportionate.

## 8 Conclusion

- (67) ESA considers that the measure constitutes state aid with 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.
- (68) 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,

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