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Decision No 124/20/COL

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

**Subject: COVID-19 compensation to the ONS Foundation**

## 1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the compensation to the Offshore Northern Seas Foundation (“ONS Foundation”) (“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 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 28 October 2020.<sup>2</sup>

## 3 Description of the measure

### 3.1 Background

- (3) Following the outbreak of the COVID-19 pandemic, the Norwegian Government adopted a series of measures aiming to counter the spread of the virus. One of the measures adopted was Regulation of 27 March 2020 No 470 on infection control etc. during the coronavirus outbreak (“Regulation 470”).<sup>3</sup>
- (4) Regulation 470 has been amended several times. As of 7 May 2020, public events with less than 50 participants were allowed under certain conditions according to Section 13 of Regulation 470. The scope of Section 13 of Regulation 470 was extended from cultural and sports events to all public events. Since 15 June 2020, events with a maximum of 200 participants have been permitted. However, only events where participants can maintain a minimum distance of one metre are allowed.
- (5) The ONS Foundation organises a conference and fair for the energy sector (the “ONS Conference”). The ONS Foundation is a non-profit organisation with the sole objective of organising the event. The ONS Conference has been held every

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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> Document Nos 1160395, 1160393, 1160389, 1160387, 1160391, 1160385.

<sup>3</sup> Forskrift om smitteverntiltak mv. ved koronautbruddet (covid-19-forskriften), [FOR-2020-03-27-470](#).

other year in Stavanger, located in Rogaland County, Norway, since 1974. The event usually takes place over a five-day period in August or September, gathering on average 70 000 visitors, exhibitors and speakers from around 100 countries. According to the Norwegian authorities, there are no other comparable events in Norway.

- (6) The event is important for the Stavanger region as a whole, seeing as the ONS Conference is the largest event in the region. The Norwegian authorities estimate the regional ripple effects to be around NOK 1–1.5 billion.<sup>4</sup> The ONS Conference is also important for facilitating political discussions on energy policies in Norway and on a global scale.
- (7) On 28 May 2020, the Government announced that large gatherings throughout 2020 had to ensure one metre distance between participants.<sup>5</sup> The ban on gatherings with more than 200 participants was in force in August/September, when the ONS Conference was scheduled to take place. As the ONS Conference normally welcomes around 70 000 participants and since the nature of the event makes it difficult to comply with the one metre distance requirement, the ONS Foundation had to cancel the event as planned.
- (8) The Norwegian authorities explain that the cancellation had a negative influence not only on the finances of the ONS Foundation, but also on the goodwill of the event. Upon the encouragement of both stakeholders and speakers, the ONS Foundation therefore decided to organise a limited, digital version of the ONS Conference on the original dates (“ONS 2020 Digital”).<sup>6</sup> ONS 2020 Digital made a small portion of the planned original content digitally available. The ONS Foundation considered charging for this content, but found that competing events were not charging for digital content produced in the COVID-19 situation, and so decided not to. The ONS Foundation also considered a paid digital version unfeasible due to time pressure and the costs involved with billing systems.
- (9) ONS 2020 Digital had a limited scale compared to the ONS Conference as it was originally planned. As an example, the ONS Conference was planned to have around 750 speakers, while ONS 2020 Digital only had 75. The ONS Conference also generates most of its revenue from its exhibition activity (around 85% of revenue), and this part of the programme had to be cancelled altogether. The ONS Conference also normally includes technical sessions and debates that did not form part of ONS 2020 Digital. According to the Norwegian authorities, the ONS 2020 Digital was therefore not a real substitute for the ONS Conference.
- (10) According to the Norwegian authorities, the ONS Foundation incurred NOK 0.7 million in additional costs for the organisation of ONS 2020 Digital. The ONS Foundation received additional sponsor revenues covering the additional costs.
- (11) The ONS Foundation also considered postponing the event until 2021, but abandoned the idea for several reasons, including difficulties related to: (i) making

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<sup>4</sup> Last assessed by Menon Business Economics, *Estimerte ringvirkninger av ONS2014 i Stavangerområdet*, Endre Kildal Iversen & Rasmus Bøgt Holmen, Issue No 5/2015.

<sup>5</sup> See [Press Conference on COVID-19](#), 28 May 2020.

<sup>6</sup> See the full digital programme <https://www.ons.no/programme/>.

arrangements for the infrastructure necessary to host an event of this size<sup>7</sup>; (ii) pinpointing an exact date for the event<sup>8</sup>; (iii) booking the conference venue<sup>9</sup>; (iv) the financial and organisational structure of the ONS Foundation; and (v) uncertainties related to COVID-19.

### 3.2 Objective

- (12) The aim of the measure is to partially cover the damage suffered by the ONS Foundation due to the cancellation of the 2020 ONS Conference in its planned form, as a consequence of the public containment measures taken by the Norwegian Government to combat the COVID-19 outbreak.

### 3.3 National legal basis and aid granting authority

- (13) The aid is granted by the Ministry of Petroleum and Energy (“the Ministry”) by way of an allocation letter. The allocation letter serves as an agreement between the Ministry and the beneficiary and will set out the terms and conditions for the aid grant, including the beneficiary’s commitments, and sanctions in case of breach of those terms and conditions.
- (14) In granting the aid, the Ministry relies on the Norwegian Parliament’s decision of 9 October 2020.<sup>10</sup>

### 3.4 Beneficiary

- (15) The beneficiary of the measure is the ONS Foundation. The Norwegian authorities have confirmed that the ONS Foundation was not an undertaking in difficulty on 31 December 2019.

### 3.5 Aid instrument, intensity, eligible costs, overlap with other schemes

- (16) The aid will be awarded in the form of a grant, disbursed as a single payment. The aid amount will be NOK 21 million provided this does not lead to overcompensation of the damage.
- (17) The eligible costs correspond to the damage cause to the ONS Foundation by the COVID-19 outbreak. The damage is defined as the net losses suffered by the ONS Foundation, due to the cancellation of the planned 2020 event, as a direct consequence of the Norwegian Government’s containment measures taken to combat the COVID-19 outbreak (see Section 3.1).
- (18) The quantification of the damage considers the following:
- (i) Loss of revenue. Loss of revenue from ticket sales, participant fees, sponsorships and rental income from exhibitors. The last time the ONS Conference took place, in 2018, it generated a revenue of NOK 114.9 million. The

<sup>7</sup> According to the Norwegian authorities, the event is dependent on the use of regional infrastructure such as hotel accommodation and airline transport, requiring hereunder that the airlines deploy larger aircraft.

<sup>8</sup> According to the Norwegian authorities, it is necessary to decide upon an exact date well in advance of the event itself due to number of international visitors and speakers.

<sup>9</sup> The venue used for this event, Stavanger Forum, consists of an area of multipurpose halls used for the ONS Exhibition, sports and other activities. The sports facilities in Stavanger Forum are used continuously throughout the year, serving as home for many of the city’s sports clubs. Planning is done well in advance, and the ONS Conference is not accounted for in 2022. The venue’s availability for next year makes the window for moving the event limited.

<sup>10</sup> Proposal by Government [Prop. 142 S \(2019–2020\)](https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=81098), page 39, adopted without amendments by Parliament: <https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=81098>.

realised income in 2020 is NOK 16.3 million and stems from up-front payments from exhibitors.

(ii) Avoided costs. The estimated avoided costs in 2020 are NOK 68.6 million and include for example personnel costs, which are reduced by 50% due to reduction in staff as of April 2020. However, the planning phase of the 2020 event started in September 2018 and so the ONS Foundation had incurred expenses before the start of the pandemic. These include costs related to the work force, such as salaries, office rent and administrative expenses.

(iii) Additional costs and revenue due to the ONS 2020 Digital. According to the Norwegian authorities, the ONS Foundation incurred costs of NOK 0.7 million in organising ONS 2020 Digital. The ONS Foundation received sponsor revenue of the same amount.

(19) The Norwegian authorities' calculation of the damage is as follows (NOK million):

Revenue 2018	114.9
– Realised income in 2020	16.3
– Avoided costs	68.6
+ Additional costs due to ONS 2020 Digital	0.7
– Additional income due to ONS 2020 Digital	0.7
= Net losses	30

(20) Based on the aid grant of NOK 21 million and estimated net losses of NOK 30 million, the aid intensity of the measure is currently expected to be 70%. The actual aid intensity will be set following an *ex post* assessment the Norwegian authorities have committed to carry out (see Section 3.6). The maximum aid intensity is 100%.

(21) The aid can be cumulated with other aid covering the same eligible costs up to 100% of the damage incurred. The Norwegian authorities have ensured that allowing cumulation will not lead to overcompensation by obliging the beneficiary to declare other aid received covering the same eligible costs.

### 3.6 Commitments

(22) The Norwegian authorities commit to carry out, no later than 30 August 2021, an *ex post* assessment of the damage suffered by the ONS Foundation as a result of the COVID-19 outbreak, quantifying the damage precisely, based on the operating accounts of the ONS Foundation for the year 2020, audited and duly certified by an independent body.

(23) The Norwegian authorities commit to ensure that the ONS Foundation repays any overcompensation, should the *ex post* assessment reveal that the total state aid received by the ONS Foundation to compensate the damage suffered as a direct consequence of the COVID-19 outbreak exceeds the actual loss.

- (24) The Norwegian authorities commit to submit to ESA, no later than a year after the adoption of this decision, a report specifying the amount of compensation.
- (25) The Norwegian authorities confirm that the payment made to the ONS Foundation 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 authorities commit to recover the insurance amount.
- (26) The Norwegian authorities commit not to grant aid to the ONS Foundation if it 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 to mitigate its damages.

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

- (27) 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.”
- (28) 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.
- (29) The aid is granted by the Ministry and is funded from the state budget. The decision to appropriate NOK 21 million was taken by the Norwegian Parliament. The first condition is therefore met.
- (30) The status of the beneficiary under national law is not decisive for whether it is an undertaking pursuant to Article 61(1). Non-profit entities such as the ONS Foundation are considered an undertaking if they engage in economic activity through offering goods or services on a market.<sup>11</sup> ESA considers that a market exists for conferences and fairs of this type, which offer services both to their exhibitors and participants. The ONS Foundation therefore engages in economic activity in organising the ONS Conference.
- (31) By compensating part of the ONS Foundation’s net losses caused by the cancellation of the planned 2020 ONS Conference, the measure relieves the ONS Foundation of charges which are normally borne from its budget and thereby confers an advantage on the beneficiary. Furthermore, the measure is selective, since it is granted to a single beneficiary, the ONS Foundation. The second and third conditions are therefore met.
- (32) ESA also considers that the measure is liable to distort competition since it strengthens the competitive position of the ONS Foundation. Furthermore, energy

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<sup>11</sup> Decision No 3/17/COL of 18 January 2017 amending, for the one-hundred and second time, the procedural and substantive rules in the field of State aid by introducing new Guidelines on the notion of State aid as referred to in Article 61(1) of the Agreement on the European Economic Area, [OJ L 342, 21.12.2017](#), p. 35–84, paragraph 9.

conferences and fairs are subject to intra-EEA competition and trade. The ONS Conference specifically targets and attracts visitors, exhibitors and speakers from around 100 countries, including from many EEA States. ESA therefore considers that the measure is liable to affect trade between the Contracting Parties to the EEA Agreement.

- (33) The measure therefore constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

## 5 Procedural requirements

- (34) 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."
- (35) The Norwegian authorities have notified the measure, which will only enter into force subject to the 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

- (36) 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. The 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 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

- (37) Neither the EEA Agreement, nor any EEA relevant legislation contains a precise definition of "exceptional occurrence".<sup>12</sup> Since Article 61(2)(b) of the EEA Agreement is an exception to the general prohibition of state aid laid down in Article 61(1) of the EEA Agreement, the notions of 'natural disaster' and 'exceptional occurrence' referred to in Article 61(2)(b) of EEA Agreement must be interpreted restrictively. That interpretation of Article 61(2)(b) of EEA Agreement is supported by the case law of the Court of Justice<sup>13</sup> as well as the case practice of ESA<sup>14</sup> and the European Commission.<sup>15</sup>

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<sup>12</sup> See also See Commission Decision in SA.56685 [C\(2020\) 1698 final](#) (Denmark) *Compensation scheme for cancellation of events related to COVID-19*, paragraph 24.

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

<sup>14</sup> See for example ESA Decision No [032/20/COL](#) *COVID-19 Compensation scheme for the cancellation or postponement of cultural events*, paragraph 42, ESA Decision Decision No [039/20/COL](#) *COVID-19 Grant scheme for undertakings suffering a substantial loss in turnover*, paragraph 60, ESA Decision No [097/20/COL](#) *COVID-19 Compensation to Haugesund Airport*, paragraph 58.

<sup>15</sup> See Commission Decision in SA.32523 [C\(2012\) 4218 final](#) (Cyprus) *Compensation scheme for air carriers registered in Cyprus for additional costs linked to the impossibility to overfly the Turkish*

- (38) 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 significant scale/economic impact,<sup>17</sup> and (iii) extraordinary.
- (39) 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.<sup>18</sup> On 12 March 2020, the European Commission adopted a decision concluding that the COVID-19 outbreak qualifies as an exceptional occurrence for the purpose of Article 107(2)(b) TFEU,<sup>19</sup> which corresponds to Article 61(2)(b) of the EEA Agreement, as it is an extraordinary, unforeseeable event having a significant economic impact.<sup>20</sup>
- (40) The spread of COVID-19 ultimately resulted in far-reaching disruption of various economic sectors. That disruption was thus 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 coronavirus, e.g. travel restrictions for non-essential travels, closure of borders, closure of non-essential shops, an obligation for companies to organise working from home for every position where this is possible, and various social distancing measures.
- (41) In view of the above, the COVID-19 outbreak qualifies 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.
- (42) ESA therefore considers the COVID-19 outbreak as an exceptional occurrence within the meaning of Article 61(2)(b) of the EEA Agreement.

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

- (43) Only damage caused by the exceptional occurrence may be compensated for under Article 61(2)(b).<sup>21</sup> In the case at hand, there is a direct link between the damage caused by the exceptional occurrence and the measure.

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*airspace*, paragraph 50. 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> [WHO Director General's opening remarks at the media briefing on COVID-19 on 11 March 2020](#).

<sup>19</sup> Which corresponds to Article 61(2)(b) of the EEA Agreement.

<sup>20</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>21</sup> See Commission Decision in SA.32163 [C\(2011\) 5495 final](#) (Slovenia) *Rectification of consequences of the damage caused to air carriers and airports by earthquake activity in Iceland and the resulting volcano ash in April 2010*, paragraph 34.

- (44) As described in Section 3.1 **Error! Reference source not found.**, the Norwegian Government introduced a series of virus containment measures to combat the spread of the virus, including a ban on public events with more than 200 participants under Regulation 470, which was in force at the time the ONS Conference was to take place. The ONS Conference is an event that normally gathers around 70 000 visitors. As a direct consequence of the Governmental ban, the ONS Foundation had to cancel the fair planned to take place in 2020. Organising the limited ONS 2020 Digital was planned following the cancellation and was targeted at mitigating the long-term consequences of the cancellation (particularly in terms of goodwill among both audience and participants), while generating at the same time additional revenue to cover the additional costs.
- (45) Therefore, the damage suffered by the ONS Foundation is directly linked to the COVID-19 outbreak through the ban on public events. As the core activity of the beneficiary is organising the ONS Conference, the ban led to a sudden and irreversible decrease of the beneficiary's 2020 revenues.
- (46) Consequently, ESA concludes that there is a direct causal link between the damage suffered by the ONS Foundation and the exceptional occurrence, i.e. the COVID-19 outbreak.

#### 6.4 Proportionality

- (47) In order to be compatible under Article 61(2)(b) of the EEA Agreement, the aid must be proportionate 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.
- (48) ESA considers the measure as proportionate for the following reasons.
- (49) ESA first notes that at this stage the precise impact on the ONS Foundation's operations is not yet known. At present, the Norwegian authorities are not in a position to precisely quantify the damage suffered by the beneficiary. The damage of the ONS Foundation is currently estimated as explained in Section 3.5.
- (50) Specifically, the damage is defined as the net losses suffered as a direct consequence of the Government's measures (see Section 3.5). The ONS Foundation made efforts to reduce costs, hereunder considering different options for reducing the damage. Although the ONS 2020 Digital was not a full substitute for the ONS Conference and market conditions made paid online content infeasible, the digital version was planned due to the cancellation of the physical event, was aimed at mitigating the long-term effects of cancellation and ultimately generated additional sponsor revenue covering the additional costs. The ONS Foundation also considered postponing the event until 2021, but ultimately considered that this was not a feasible option for the reasons set out in paragraph (11).
- (51) Since the calculation of damage is based on an estimate, the ONS Foundation will be obliged to present actual figures, confirmed by an external auditor, allowing the exact calculation of the actual damage. The Norwegian authorities have committed to carry out an *ex post* assessment of the damage suffered by the ONS Foundation as a result of the COVID-19 outbreak by 30 August 2021. The *ex post* assessment will be based on the operating accounts of the ONS Foundation for the year 2020, audited and duly certified by an independent body.



Furthermore, the Norwegian authorities have committed to submit the results and the amount of aid granted to ESA, no later than 1 year after the date of the present decision. The ONS Foundation will be contractually obliged to repay any overcompensation (aid exceeding 100% aid intensity as a result of, for instance, lower costs or higher revenue than expected in 2020, or cumulation with other aid covering the same eligible costs). This mechanism secures that overcompensation is avoided.

- (52) Consequently, ESA concludes that the methodology used to calculate the damage is appropriate.
- (53) Second, the estimated aid intensity of 70% is well below the maximum allowed aid under Article 61(2)(b) EEA, which is 100% of the damage caused by the exceptional occurrence.
- (54) Third, the Norwegian authorities ensure that allowing cumulation up to 100% of the damage incurred does not lead to overcompensation by obliging the beneficiary to declare other aid received covering the same eligible costs (see Section 3.6). Furthermore, payment made to the ONS Foundation 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 authorities will recover the insurance amount. Moreover, the ONS Foundation will not receive aid for damage that they are responsible for due to lack of due diligence, compliance with applicable legislation, or measures to mitigate its damages. ESA considers that this is apt to prevent that the ONS Foundation is overcompensated for its damage.
- (55) ESA therefore concludes that the measure is proportionate.

## 7 Conclusion

- (56) On the basis of the foregoing assessment, 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 its implementation.
- (57) The Norwegian authorities have confirmed that this decision 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.*