

Brussels, 18 December 2020  
Case No: 85979  
Document No: 1168145  
Decision No 168/20/COL

Ministry of Finance and Economic Affairs  
Arnarhvoli  
101 Reykjavík  
Iceland

**Subject: COVID-19 Compensation to Harpa**

## **1 Summary**

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Iceland that, having assessed the notified compensation (“the measure”) to Harpa tónlistar- og ráðstefnuhús ohf. (“Harpa”), 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 Icelandic authorities notified the measure on 17 December 2020.<sup>2</sup>

## **3 Description of the measure**

### **3.1 Background**

- (3) The outbreak of the COVID-19 pandemic and the various containment measures adopted by the Icelandic Government, as well as other national authorities, such as travel restrictions, lockdowns and social distancing requirements, have led to a decline in demand for services nationally and globally. According to the Icelandic authorities, the pandemic has had an unprecedented effect on business activity in Iceland.
- (4) As the pandemic has continued to resurface, and strict measures to contain the spreading of the virus have had to be imposed and re-imposed, general economic activity has slowed down significantly. Restrictions on large gatherings, minimum distance requirements between individuals and the outright prohibition on the provision of services requiring close proximity between individuals, have had significant effects in this respect. In Iceland, thousands of people have been quarantined and people have been instructed to stay at home if possible. The restrictions, as well as subdued demand, have led many businesses to close operations temporarily. The current restrictions were introduced on 8 December 2020 and will be in effect from 9 December until 12 January 2021.

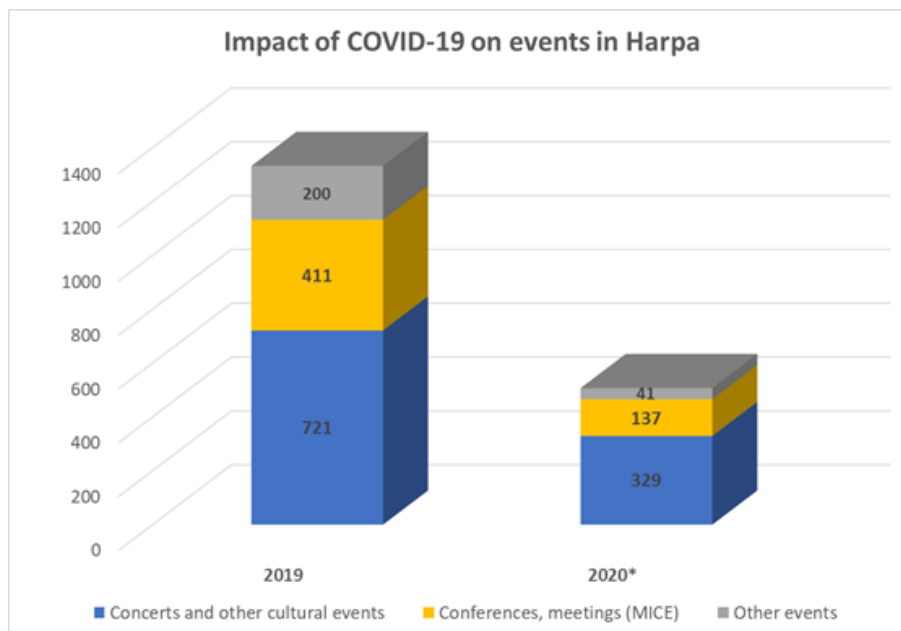
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<sup>1</sup> Reference is made to Article 4(3) of the Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

<sup>2</sup> Documents No 1169936, No 1169938 and No 1169940.

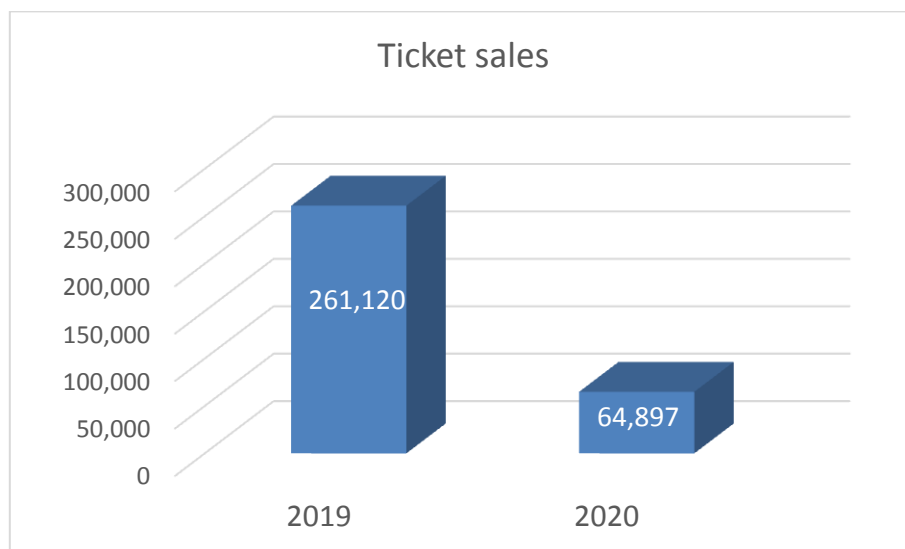
- (5) According to the Icelandic authorities, many undertakings that rely on tourism, such as Harpa, have faced partial or full suspension of their activities. This in turn has caused heavy losses of turnover, with negative effects on their operations.
- (6) The Icelandic authorities submit that the impact of the COVID-19 pandemic and the associated restrictions, as described above, have also had a paralysing effect on the events economy in Iceland. No larger-scale events have been held since March 2020, and most international conferences have either been cancelled, postponed or held virtually. The Icelandic authorities further submit that more or less all domestic corporate events, such as meetings and conferences, have either been cancelled or replaced by virtual conferences. Cultural institutions and centres have been intermittently closed or kept open only for a limited number of guests, in compliance with relevant restrictions, making it impossible to maintain normal operations.
- (7) Harpa's operations are divided into several categories, including ticket sales and conference activities, its core activity being the leasing out of spaces for events.<sup>3</sup> The following charts, submitted by the Icelandic authorities, depict the actual and anticipated reduction in number of events held in Harpa and number of tickets sold through Harpa's box office.

Chart 1 – impact of COVID-19 on events in Harpa:



<sup>3</sup> According to the annual accounts of Harpa for the year 2019, revenues from activities related to events and conferences accounted for approximately 63% of Harpa's revenues. Other major revenue streams include operating license agreements (20%) and leasing activities (15%).

Chart 2 – Impact of COVID-19 on ticket sales:



- (8) As for the period from 1 January 2021 to 30 June 2021, the impact of COVID-19 on Harpa’s operations is based on forecasts, which, according to the Icelandic authorities, take into account: (i) the number of events already booked and transferred from 2020 to 2021, (ii) scenarios produced by Isavia ohf. and the Iceland Tourism Board, which predict that travel restrictions will be in place to some degree until the second part of 2021, (iii) Harpa’s internal forecasts (which take into account Harpa’s most important customers in the domestic and international events markets, including professional conference organisers (“PCOs”) in the meetings, incentives, conferences and events (“MICE”) market), and (iv) data and forecasts from the 2020 October Congress of the International Congress and Convention Association (of which Harpa is a member).
- (9) The Icelandic authorities acknowledge that recent positive news on the availability of vaccines does encourage Harpa to lean towards a more optimistic scenario. However, they also note that the events business will take significant time to recover, as the lead-time is usually at least 2–3 years for international events, such as conferences that have the highest yield for a venue like Harpa. Further, the return of tourism is also a major premise for businesses in Harpa in the food, beverage and retail sectors. Since Harpa receives a share of their turnover, its revenues from these companies will be lower than usual until tourism recovers.
- (10) Further, Harpa has taken mitigating measures to minimise the negative impact of COVID-19, including re-booking and re-organising events in collaboration with customers, offering new event formats, such as streaming and hybrid events and converting some of the halls into temporary recording and filming studios. Harpa has also instituted pay-cuts and reduced staff.
- (11) The Icelandic authorities have also informed ESA about a share capital increase of ISK 510 million agreed upon by the shareholders, the State and the City of Reykjavík. The share capital increase is intended as financing for the support of new investments and projects in Harpa. The share capital increase does not form part of the notified measure.

### 3.2 Objective

- (12) The objective of the measure is to compensate Harpa for the damage suffered as a direct consequence of the COVID-19 pandemic and the containment measures adopted by the Icelandic Government to fight the spread of the virus.

### 3.3 Beneficiary

- (13) The beneficiary is Harpa tónlistar- og ráðstefnuhús ohf., a public organisation jointly owned by the Icelandic State (54%) and the City of Reykjavík (46%). The beneficiary's main purpose is to operate the Harpa Concert Hall and Conference Centre.
- (14) The financing of Harpa was the subject of ESA's [Decision No 496/13/COL](#) of 11 December 2013.
- (15) Harpa is a forum for diverse and ambitious music and cultural life in Iceland, promoting Icelandic artists, with a special emphasis on diverse musical events.
- (16) Furthermore, Harpa is a forum for all kinds of conferences, meetings and gatherings, domestic and foreign. Harpa also promotes tourism in Iceland and strengthens the city centre of Reykjavík. It is a destination for visitors, both foreign and domestic, that want to get to know the building and its architecture, as well as enjoying the services offered and the art displayed in the building.
- (17) Harpa is the home of the Icelandic Symphony Orchestra, the Icelandic Opera and the Reykjavík Big Band. Harpa also accommodates conferences, as well as various art events, such as pop and rock concerts from both Icelandic and foreign artists. Some activities in Harpa are operated by private companies, which rent facilities in Harpa. These facilities are leased to the private operators on market terms and are subject to public tenders, where the most favourable offers are accepted. The Icelandic authorities note that five out of seven partners in Harpa that are contracted to operate restaurants, retail and sale of tourism services have ceased their operations as a result of the pandemic and the measures taken in response.
- (18) Annually, Harpa receives around 2 million visits from individuals attending events and/or seeking to explore the building. The annual number of events has grown in recent years to around 1 300 in 2019, of which 721 were concerts and cultural events and 411 were corporate events, such as meetings, trade shows, conferences and receptions. Around 8–10 larger international events are held annually in Harpa.

### 3.4 Aid granting authority and national legal basis

- (19) The Ministry of Finance and Economic Affairs and the City of Reykjavík will jointly grant the aid proportionate to their respective shareholdings in Harpa and administer its conditions.
- (20) As for the State, the national legal basis for the measures is the State budget act for 2020 and the budget bill for 2021. As for the City of Reykjavík, the aid is based on the revised budget for 2020 and the approved budget for 2021.

### 3.5 Aid instrument, eligible costs, compensation period, intensity, overlap with other aid measures

- (21) The aid will be awarded in the form of a direct grant. The aid amount will be ISK 400 million.
- (22) The eligible costs correspond to the damage suffered by Harpa, as a consequence of the outbreak of the COVID-19 pandemic. The damage is defined as the net losses suffered by Harpa, due to loss of revenue as a direct consequence of the Icelandic Government's containment measures taken to combat the COVID-19 pandemic (see Section 3.1).
- (23) The quantification of the damage considers the following:
- (i) Loss of revenue  
Loss of revenue from commercial activities, such as the rental of halls and commercial spaces, technical services, ticket sales, catering and car parking fees.
  - (ii) Avoided costs  
The estimated avoided costs in 2020 are ISK 286 million and include personnel costs, which were reduced by 26%, due to reduction in staff and pay cuts as of April 2020, and a 13% reduction in fixed cost, such as contractors working on events, administrative costs, marketing, etc.
- (24) On the basis of the methodology described above, the aid will compensate damage caused by the COVID-19 pandemic and measures taken in response in the period from 1 March 2020 to 30 June 2021 ("the compensation period"), totalling ISK 466 million. The damage consists of net losses, i.e. the difference between the profit/loss incurred under the new circumstances ("the factual scenario") and the profit/loss incurred during a reference period (March 2019 – December 2019) before these events ("the counterfactual scenario").
- (25) The Icelandic authorities' calculation of the damage is as follows:

#### Tables 1 and 2 – Calculation of damage:

March – December 2020 revenue loss <sup>4</sup>	ISK 761.2 million (-)
March – December 2020 total cost avoidance	ISK 432.5 million (+)
= Total damage 2020	<b>ISK 328.7 million (-)</b>

January – June 2021 expected revenue loss <sup>5</sup>	ISK 337 million (-)
January – June 2021 expected total cost avoidance	ISK 199.7 million (+)
= Total damage 2021	<b>ISK 137.3 million (-)</b>

- (26) Based on the aid grant of ISK 400 million and estimated net losses of ISK 466 million, the aid intensity of the measure is currently assessed as 85.8%. The actual aid intensity will be determined following an *ex post* assessment the Icelandic authorities have committed to carry out (see Section 3.6). The maximum aid intensity is 100%.

<sup>4</sup> Comparison between net losses in the defined period in 2020 and net losses in 2019, the reference period.

<sup>5</sup> Comparison between expected net losses in the defined period in 2021 and net losses in 2019, the reference period.

- (27) The aid can be cumulated with other aid, covering the same eligible costs, up to 100% of the damage incurred. The Icelandic 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

- (28) The Icelandic authorities commit to carry out a preliminary *ex post* assessment quantifying precisely the amount of compensation, damage and recoverable advances, to be submitted by means of a report to ESA by 15 December 2021. Subsequently, and no later than 30 March 2022, an *ex post* assessment of the damage suffered by Harpa, as a result of the COVID-19 outbreak, and recoverable advances will be carried out, quantifying the damage precisely, based on the operating accounts of Harpa for the compensation period, audited and duly certified by an independent auditor. The Icelandic authorities further commit to submit to ESA, no later than 15 April 2022, the results of the analysis of the *ex post* assessment of the damage suffered by Harpa and the amount of compensation granted.
- (29) The Icelandic authorities commit to ensure that Harpa repays any overcompensation, should the *ex post* assessment reveal that the total state aid received by Harpa to compensate the damage suffered as a direct consequence of the COVID-19 pandemic exceed the actual loss.
- (30) The Icelandic authorities confirm that the payment made to Harpa 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.
- (31) The Icelandic authorities commit not to grant aid to Harpa if it is responsible for the damage suffered and/or did not conduct its activities with due diligence or in compliance with the applicable legislation or did not take any measure to mitigate its damages.

## 4 Presence of state aid

- (32) 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."
- (33) 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.
- (34) ESA notes that both local and regional authorities are considered to be equivalent to the State. Consequently, the State for the purpose of Article 61(1) of the EEA Agreement covers all bodies of the State administration, from the central government to the City level or the lowest administrative level, as well as public

undertakings and bodies.<sup>6</sup> It follows that municipal resources are considered to be State resources within the meaning of Article 61(1) of the EEA Agreement. Since the Icelandic State and the City of Reykjavik will jointly cover the direct grant from their budgets, State resources are involved. The first condition is therefore met.

- (35) The beneficiary is an undertaking partially engaged in economic activity, as described in Section 3.3 above.<sup>7</sup> An economic advantage in the context of Article 61(1) of the EEA Agreement constitutes any economic benefit which an undertaking would not have obtained under normal market conditions. The objective of the measure is to compensate Harpa for the damage suffered as a direct effect of the pandemic and enable it to undertake operations that it might not be able to undertake otherwise. Furthermore, the measure is selective as it is granted to a single beneficiary, namely Harpa. The second and third conditions are therefore met.
- (36) Lastly, ESA considers that the measure is liable to distort competition, since it strengthens the competitive position of Harpa. Harpa operates in sectors which are subject to intra-EEA trade, such as organising conferencing and large international events, and the measure is liable to strengthen its position compared to other undertakings operating in the same sectors. Consequently, the measure threatens to distort competition and affects intra-EEA trade. The fourth condition is therefore met.
- (37) As a result, the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

## 5 Procedural requirements

- (38) 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."
- (39) The Icelandic authorities have notified the aid measure covered by this decision and have not granted the aid yet. 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 Preliminary remarks

- (40) 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.

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<sup>6</sup> See ESA's Guidelines on the notion of state aid ('NoA'), [OJ L 342, 21.12.2017, p. 35](#), and EEA Supplement No 82, 21.12.2017, p. 1, para. 48.

<sup>7</sup> To this effect, see also ESA's [Decision No 496/13/COL](#), paras. 49-52.

## 6.2 COVID-19 as an exceptional occurrence

- (41) Neither the EEA Agreement, nor any EEA relevant legislation contains a precise definition of “exceptional occurrence”.<sup>8</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>9</sup> as well as the case practice of ESA<sup>10</sup> and the European Commission.<sup>11</sup>
- (42) 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>12</sup> (ii) of significant scale/economic impact,<sup>13</sup> and (iii) extraordinary.
- (43) 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>14</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>15</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>16</sup>
- (44) 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-

<sup>8</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>9</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>10</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 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>11</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 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>12</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>13</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>14</sup> [WHO Director General's opening remarks at the media briefing on COVID-19 on 11 March 2020](#).

<sup>15</sup> Which corresponds to Article 61(2)(b) of the EEA Agreement.

<sup>16</sup> Commission Decision in SA.56685 [C\(2020\) 1698 final](#) (Denmark) *Compensation scheme for cancellation of events related to COVID-19*, paragraphs 26–30.



essential shops, an obligation for companies to organise working from home for every position where this is possible, and various social distancing measures.

- (45) 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.
- (46) 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 measures**

- (47) Only damage caused by the exceptional occurrence may be compensated for under Article 61(2)(b).<sup>17</sup> In the case at hand, there is a direct link between the damage caused by the exceptional occurrence and the measure.
- (48) As described in Section 3.1, the Icelandic Government has introduced a series of measures to limit the spread of the virus, with immediate and unforeseeable impact for the events industry, resulting in drastic loss of income. The measures, including restrictions on larger gatherings and minimum distance requirements, have had a direct effect on the events industry. Therefore, the damage suffered by Harpa, both actual and predicted, is directly linked to the COVID-19 outbreak through applicable bans and restrictions, as also depicted in Charts 1 and 2 above. As the core activity of Harpa is to lease space for events, the bans and restrictions led to a sudden and irreversible decrease of the beneficiary's revenues.
- (49) With reference to the above, ESA concludes that there is a direct causal link between the damage suffered by Harpa and the exceptional occurrence, i.e. the COVID-19 outbreak.

### **6.4 Proportionality**

- (50) 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.
- (51) ESA considers the measure proportionate for the following reasons.
- (52) As a preliminary remark, the precise impact on Harpa's operations is unknown. The Icelandic authorities are not yet in a position to precisely quantify the damage suffered by the beneficiary. The damage suffered by Harpa is currently estimated as explained in Section 3.5.
- (53) Specifically, the damage is defined as the net losses suffered as a direct consequence of the Government's measures. Harpa made efforts to reduce costs and implemented various measures to reduce the damage, such as reductions in personnel and pay cuts.

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<sup>17</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.

- (54) Since the calculation of damage is based on an estimate, Harpa will be obliged to present actual figures, confirmed by an external auditor, allowing the exact calculation of the actual damage. The Icelandic authorities have committed to carry out an *ex post* assessment of the damage suffered by Harpa as a result of the COVID-19 outbreak, as described in Section 3.6. The *ex post* assessment will be based on the operating account of Harpa for the compensation period, audited and duly certified by an independent body.
- (55) Furthermore, the Icelandic authorities have committed to submit a preliminary *ex post* assessment quantifying precisely the amount of compensation, damage and recoverable advances by 15 December 2021. Harpa 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 for the compensation period, or cumulation with other aid covering the same eligible costs). This mechanism secures that overcompensation is avoided.
- (56) Consequently, ESA concludes that the methodology used to calculate the damage is appropriate.
- (57) Second, the estimated aid intensity of 85.8% is below the maximum allowed aid under Article 61(2)(b) of the EEA Agreement, which is 100% of the damage caused by the exceptional occurrence.
- (58) Third, the Icelandic 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 Harpa 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 Icelandic authorities will recover the insurance amount. Moreover, Harpa 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 Harpa is overcompensated for its damage.

## 7 Conclusion

- (59) On the basis of the foregoing assessment, ESA considers that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that the 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.
- (60) The Icelandic authorities have confirmed that his 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

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