

Ministry of Trade, Industry and Fisheries  
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Norway

**Subject: COVID-19 aid scheme for reinsurance of package travel guarantees**

## 1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the notified reinsurance scheme for package travel guarantees (“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(3)(b). ESA has based its decision on the following considerations.

## 2 Procedure

- (2) The Norwegian authorities notified the measure on 21 May 2021.<sup>2</sup>

## 3 Description of the measure

### 3.1 Background

#### 3.1.1 The legal framework for the package travel sector and guarantees

- (3) Package travels are regulated in the Norwegian Act on package travel and travel guarantees (“the Package Travel Act”),<sup>3</sup> and the Norwegian Regulation on package travel and travel guarantees, etc. (“the Package Travel Regulation”).<sup>4</sup> The Norwegian authorities have submitted that the Package Travel Act and the Package Travel Regulation serve to implement [the Package Travel Directive](#).<sup>5</sup>
- (4) A package travel is an organised travel where the same supplier arranges transportation, accommodation, etc.<sup>6</sup> The Package Travel Directive, and the Package Travel Act, differentiate between: (i) package travels and linked travel

<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 1202591 and 1202593.

<sup>3</sup> *Lov av 15. juni 2018 nr. 32 om pakkereiser og reisegaranti mv. (pakkereiseloven)* ([LOV-2018-06-15-32](#)).

<sup>4</sup> *Forskrift av 22. juni 2018 nr. 254 om pakkereiser og reisegaranti mv. (pakkereiseforskriften)* ([FOR-06-22-954](#)).

<sup>5</sup> Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1–33), as incorporated and amended to the EEA Agreement by Joint Committee Decision 187/2017 on 22 September 2017, entered into force in the EEA on 1 February 2020 following the lifting of constitutional requirements.

<sup>6</sup> See definition in Section 6 of *pakkereiseloven*.

arrangements,<sup>7</sup> and (ii) package travel organisers and package travel traders.<sup>8</sup> However, for the purposes of this decision, these will be referred to jointly as: (i) package travels, and (ii) package travel organisers, respectively. In short, package travel organisers sell and/or supply package travel services.

- (5) According to the Package Travel Act and the Package Travel Regulation, package travel organisers must have a package travel guarantee, in order to advertise and sell package travels.<sup>9</sup> A package travel guarantee (“Guarantee”) is a guarantee issued by a bank or an insurance company to the Travel Guarantee Fund (“the Guarantee Fund”) ([\*Reisegarantifondet\*](#)).<sup>10</sup>
- (6) In order to obtain a Guarantee, the package travel organisers enter into agreements (“Guarantee Agreements”) with a bank or an insurance company (hereafter collectively referred to as “insurers”).<sup>11</sup> Through the Guarantee Agreement, the insurer undertakes to pay the Guarantee Fund an amount, limited to the nominal value of the Guarantee, in the event that the package travel service is not provided to the customer, due to the insolvency of the package travel organiser. In these situations, the Guarantee Fund covers claims from customers of package travel organisers unable to cover the claims.
- (7) The purpose of the Guarantee Fund is to ensure a high level of consumer protection. The Guarantee covers payments already made by the customers, such as down payments and residual payments. Furthermore, the Guarantee covers the costs necessary for the repatriation of customers and, if necessary, the costs of accommodation prior to their repatriation.
- (8) When a package travel organiser enters into a Guarantee Agreement, the Guarantee normally covers the entire portfolio of a package travel organiser, often in the form of a framework agreement with a cap. Package travel organisers that lose access to a Guarantee are in practice unable to continue their business. The existence of affordable Guarantees, and a well-functioning market for Guarantees, are therefore necessary for the functioning of the package travel sector.

### 3.1.2 The impact of COVID-19 on the market for Guarantees

- (9) The Norwegian tourism sector is an important part of the Norwegian economy, and the package travel sector is an important part of the Norwegian tourism sector.
- (10) The COVID-19 outbreak has severely affected the Norwegian economy. To combat the COVID-19 outbreak, the Norwegian authorities have introduced a large amount of containment measures. These include social distancing measures, travel restrictions, quarantines and lockdowns. These measures affect

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<sup>7</sup> See definitions in Sections 5, 6 and 7 of *pakkereiseloven* and Article 3(1), (2) and (5) of the Package Travel Directive.

<sup>8</sup> See definitions in Sections 8e and 8a of *pakkereiseloven* and Article 3(7) and (8) of the Package Travel Directive

<sup>9</sup> See Section 42 of *pakkereiseloven*, as well as Section 1 of *pakkereiseforskriften*, and Article 17 of the Package Travel Directive.

<sup>10</sup> See Section 42 of *pakkereiseloven*.

<sup>11</sup> Package travel organisers can also deposit an equivalent amount of money in a bank account accessible only to the Travel Guarantee Fund. This liquidity intensive option remains a meaningful alternative only for some package travel organisers, for example those with highly liquid owners.

in particular the tourism sector and have hit the package travel sector especially hard.

- (11) As a consequence, package travel organisers have suffered severe losses. These losses have led to package travel organisers suffering liquidity constraints.
- (12) In May 2020, the Travel Guarantee Fund had 844 package travel organisers as members. On 15 April 2021, the number of members was down to 707. Some of the previous members went bankrupt, and others have wound up their business. Approximately 690 of the current members are small and medium-sized undertakings (SMEs) within the meaning of Article 2(2) of the General Block Exemption Regulation ([GBER](#)).<sup>12</sup> The market share that SMEs have in the package travel sector and so represent in the market for Guarantees amounts to approximately 40–50%. Today, this corresponds to Guarantees of about NOK 950 million (approx. EUR 95 million).
- (13) There are mainly four insurance companies and 10–15 banks active on the insurance market for Guarantees. These insurers normally offer a broad range of financial services, in addition to providing Guarantees. Due to the abovementioned effects on the package travel sector, insurers are taking increasingly higher risks by offering Guarantees. Therefore, several insurers have withdrawn from the market for Guarantees. There are furthermore indications that other insurers have reduced their offers, rejected new requests for Guarantees, required package travel organisers to have positive operating results, and/or significantly increased their premiums. Many insurers have indicated that in order to return to their pre-pandemic offering, the market conditions will have to normalise.
- (14) As a result of the developments described above, there is reduced availability of Guarantees for package travel organisers. In many instances, package travel organisers are no longer able to obtain the Guarantees they are legally required to obtain, in order to provide their services. If there is an insufficient supply of Guarantees, this may have severe spill-over effects, lasting beyond the pandemic for the package travel sector and for the tourism sector as a whole.
- (15) Against this background, the Norwegian authorities propose providing to insurers an optional loss coverage, where in the event of insolvency of the package travel organisers, which triggers the Guarantee, the Norwegian authorities will cover 50% of the loss that materialises for insurers. In the following, the loss coverage obtained through this guarantee will be referred to as the “reinsurance”. The reinsurance reduces the risk for insurers and helps ensure that package travel organisers get access to Guarantees that are not otherwise obtainable in the market, or that are not obtainable at affordable prices.

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<sup>12</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.

### 3.2 Objective

- (16) The objective and rationale of the measure is to remedy the impact and distortion that the COVID-19 outbreak has had on the market for Guarantees. The goal is to avoid that healthy package travel organisers go out of business because they lack access to Guarantees. The measure is intended to remedy the lack of Guarantees, or affordable Guarantees, by reducing the risk for insurers. By securing that package travel organisers can get the legally required Guarantees, the measure will increase the chances of a swifter recovery of the package travel sector, when the worst of the COVID-19 pandemic is over.

### 3.3 National legal basis

- (17) The national legal basis of the measure will be a decision of the Norwegian Parliament, authorising the measure and setting out its main conditions.<sup>13</sup>

### 3.4 Aid granting authority and administration of the measure

- (18) The measure will be administered by the Norwegian Export Credit Guarantee Agency (“GIEK”), which is also the aid granting authority.<sup>14</sup>
- (19) To obtain the reinsurance from Norwegian authorities, insurers must submit a written application to GIEK. In the application, insurers must provide a description of their Guarantee portfolio and an estimate of what their total exposure is likely to be for the duration of the measure. This information is submitted in order to allow GIEK to keep track of the State’s exposure and exposure cap, as set out in Section 3.8 below.
- (20) GIEK will only be responsible for the administration of the measure. GIEK will not be involved in insurers’ assessments and decisions regarding the issuance of Guarantees to package travel organisers. Insurers will therefore continue to operate as they normally do with regard to risk assessment and pricing of each Guarantee.
- (21) Participating insurers will be required to report to GIEK. Insurers must specify in percentage points the value resulting from the measure for each package travel organiser in the form of lower premiums and reduced collateral. Insurers may also be required to provide a monthly report on the functioning of the measure, for example on the development of the insured portfolios.

### 3.5 Beneficiaries

#### 3.5.1 Direct and indirect beneficiaries

- (22) The intended beneficiaries of the measure are the package travel organisers. The measure aims to ensure that package travel organisers can get access to Guarantees that are not otherwise obtainable in the market, or that are not obtainable at affordable prices. Therefore, package travel organisers are the direct beneficiaries of the measure.
- (23) However, the aid is channelled through insurers. Even if insurers are intended to function only as conduits of the aid to the final beneficiaries it cannot be excluded

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<sup>13</sup> The Parliamentary committee proposal Innst. 489 S (2020–2021) authorising the main conditions of the measure was proposed by the Government in Prop. 107 S (2020–2021). The measure is part of the national budget for 2021, which was adopted by Parliament on 19 December 2020, but revised on 11 May 2021.

<sup>14</sup> Provided that Parliament approves the measure as envisaged and as described in this Decision.

that insurers receive indirect advantages through the measure. The measure therefore entails features to ensure that the advantage is, as much possible, passed on to the package travel organisers, as set out in Section 3.6 below.

### *3.5.2 The option of reinsurance is limited to Guarantees for SME package travel organisers*

- (24) The option of reinsurance is restricted to Guarantees issued by insurers to SME package travel organisers.
- (25) According to the Norwegian authorities, larger package travel organisers have to a lesser extent experienced problems related to obtaining Guarantees. In addition, SMEs are, comparatively, more important for other, and smaller, actors in the Norwegian tourism industry. SME package travel organisers contribute to increasing the customer base for a number of smaller tourism companies in Norway, such as restaurants and companies offering activities, experiences, accommodation, etc. Larger package travel organisers tend to focus on offering package travel abroad and are therefore less central to Norway's economic recovery than domestic tourism.

### *3.5.3 Limitation for undertakings in difficulty*

- (26) The reinsurance will cover all the existing Guarantees for SMEs in the portfolio of insurers. If only Guarantees provided from now on would be reinsured, it would be liable to trigger the termination of many Guarantees only in order to enter into new contracts eligible under the measure. This would, in the Norwegian authorities' view, lead to market turbulence.
- (27) Insurers cannot issue new Guarantees to undertakings that were in difficulty on 31 December 2019 within the meaning of Article 2(18) of the GBER. This will not apply to pre-existing Guarantees in insurers' portfolios given the large administrative burden that it would involve for insurers to go through their portfolios and remove existing clients. However, according to the Norwegian authorities, it is highly unlikely that any package travel organisers already in difficulty on 31 December 2019 in practice could benefit from the measure. As indicated by the figures on bankruptcies in the sector set out in paragraph (12) above, package travel organisers that were already in difficulty prior to the COVID-19 outbreak are unlikely to have survived and, in the unlikely event they have, their Guarantees would in all likelihood already be cancelled.

## **3.6 Main features of the measure and aid intensity**

- (28) The reinsurance covers the same costs and payments as the original Guarantee, described in paragraph (7) above. The measure entails that the Norwegian authorities assume 50% of the risk associated with the Guarantees. The reinsurance therefore reduces insurers' exposure of the risk of insolvency of package travel organisers. According to the Norwegian authorities, this will lead to insurance premiums being reduced, and therefore to maintaining, or even re-establishing the well-functioning market for Guarantees.
- (29) In return for providing reinsurance, the Norwegian authorities will collect part of the premiums of the portfolio. To cover their administrative costs, insurers will retain an administration fee of 30% of the total premium paid. The remaining 70% is shared between the insurer and the State. This means that insurers will receive 65% of the total income, whereas 35% accrue to the State.

- (30) The design of the measure ensures that it is sufficiently attractive for insurers to opt for the measure if the market conditions are, or become, as bad as anticipated. By having insurers cover some of the losses incurred, they are provided with an incentive to carry out realistic and market-based risk assessment and pricing of each Guarantee. At the same time, the insurers have to give up revenue, because the Norwegian authorities collect part of the premiums. This ensures that it is not commercially attractive to opt for the measure if insurers are able to provide a sufficient quantity of affordable Guarantees without it. This makes it sufficiently unattractive for insurers to apply for reinsurance if the market conditions improve or if they are not as bad as evidence suggests.
- (31) In addition, the measure requires that insurers apply for a reinsurance for all or none of the Guarantees that they provide. This feature of the measure is implemented to avoid “cherry picking” and unfortunate risk screening, where insurers apply for reinsurance of the riskiest Guarantees but keep the profit on the Guarantees that are safer and of limited risk. At the same time, it is unlikely that insurers would give up 35% of anticipated premiums for Guarantees that have already been assessed, priced and concluded, unless market conditions require them to do so.
- (32) There is no individual cap on the amount of reinsurance that can be provided to each insurer. The reinsurance will be provided on a first come, first serve basis until the budget limit, set out in Section 3.8 below, is reached.

### **3.7 Duration**

- (33) The measure is temporary in nature. It is set to come into force following ESA’s approval, and insurers can apply for aid under the measure until 31 December 2021. However, the Norwegian authorities can cover losses that are triggered, as a result of insolvency, until 31 December 2022.
- (34) The purpose of partly covering insurance events in the year succeeding the termination of the measure is that this provides the necessary degree of predictability for insurers, and avoids a sudden hike in risks on the day when the measure expires. Furthermore, information suggests that insurers will require package travel organisers to have positive operating results (profits) before they can offer Guarantees on normal market terms. Package travel organisers will likely carry forward COVID-19 related losses for some time, after normal travel activities can resume, and therefore not be profitable immediately after the pandemic. According to the Norwegian authorities, package travel organisers are expected to need at least a full year of normal activity to become profitable, due to the cyclic nature of the industry.
- (35) However, insurers always have the possibility to terminate the agreement with the State. Taking into account the considerations set out at paragraph (30) above, this is likely to happen once market conditions significantly improve.

### **3.8 Budget**

- (36) The Norwegian authorities have provided a budget with an estimated amount. The estimated amount that will be guaranteed under the measure is NOK 525 million (approximately EUR 52 million).

- (37) The State will reinsure Guarantees with a value up to NOK 1.05 billion. This means that the State's maximum exposure under the measure is NOK 525 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 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 imputable to the State, since the reinsurance is provided by GIEK, a government agency, on behalf of the Norwegian State. It is financed through State resources, since the reinsurance is backed by the Norwegian State.
- (41) The measure confers on the beneficiaries an advantage that relieves them of charges that are normally borne from their budget. For the package travel organisers, the measure confers an advantage in the form of access to Guarantees that they would not be able to obtain, or not obtain on the same terms, under normal market conditions. The measure confers an indirect advantage on insurers, as the reinsurance will allow them to maintain activities, which they would not be able to maintain in the absence of the reinsurance. The fact that insurers keep only a limited amount of the premiums paid by the package travel organisers is not sufficient to exclude an advantage at the level of insurers.
- (42) The advantage granted by the measure is selective since it is awarded only to certain undertakings, namely package travel organisers and participating insurers.
- (43) Both insurers and package travel organisers engage in economic activities, and qualify as undertakings.
- (44) As the competitive position of the beneficiaries is strengthened, the measure is liable to distort competition or threaten to distort competition. Since both the direct and indirect beneficiaries are active in markets characterised by cross-border trade, the measure is also capable of affecting trade between the Contracting Parties.
- (45) The measure therefore constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

#### **5 Aid scheme**

- (46) 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. The aid is therefore granted on the basis of an aid scheme.

## 6 Procedural requirements

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

## 7 Compatibility of the aid

### 7.1 Introduction

- (49) In derogation from the general prohibition of state aid laid down in Article 61(1) of the EEA Agreement, aid may be declared compatible if it can benefit from one of the derogations enumerated in the Agreement.
- (50) Pursuant to Article 61(3)(b) of the EEA Agreement, ESA may declare compatible with the functioning of the Agreement aid "to remedy a serious disturbance in the economy of an EC Member State or an EFTA State". The disturbance must affect the whole or an important part of the economy of the State concerned, and not merely that of one of its regions or parts of its territory. This is in line with the requirement to interpret exceptions, such as Article 61(3)(b) of the EEA Agreement, strictly.
- (51) In the context of the current COVID-19 outbreak, the European Commission adopted the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ("the [Temporary Framework](#)").<sup>15</sup> The Temporary Framework sets out temporary state aid measures that the Commission considers compatible under Article 107(3)(b) TFEU, which corresponds to Article 61(3)(b) of the EEA Agreement. The Commission confirms that the current situation, specifically the effect of the containment measures adopted by national states on their economies, justify that aid can be granted on the basis of this provision. This type of aid is available for a limited period to remedy the liquidity shortage faced by undertakings to ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability.
- (52) In order to ensure uniform application of the state aid rules throughout the European Economic Area, in line with the objective of homogeneity established in Article 1 of the EEA Agreement, ESA applies the compatibility conditions set out in the Temporary Framework to state aid granted by the EEA EFTA States under Article 61(3)(b) EEA in the context of the COVID-19 outbreak.
- (53) The COVID-19 outbreak has had a significant impact on the Norwegian economy and on the package travel sector. The measure aims at returning the market for Guarantees, which is disturbed by the COVID-19 outbreak, to normal function.

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<sup>15</sup> 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.



Through this, it aims at facilitating the opportunities for package travel organisers to obtain Guarantees at affordable prices, so that the package travel sector can function.

- (54) While the Commission has provided guidance in the Temporary Framework, as to when aid under Article 107(3)(b) TFEU can be declared compatible in light of the current shock to the economy, the Temporary Framework is not directly applicable in this case, as it does not cover the specific type of guarantee that is granted by the State through the measure. Therefore, the measure must be assessed on the general compatibility criteria in Article 61(3)(b) EEA. However, the Temporary Framework can provide general guidance, and its principles can be applied by analogy to the extent appropriate.<sup>16</sup>
- (55) As for any derogation from the prohibition on state aid enshrined in Article 61(1) of the EEA Agreement, the compatibility exemption pursuant to Article 61(3)(b) of the EEA Agreement must be interpreted and applied restrictively. Such a strict application requires taking into account, in particular, the nature and the objective seriousness of the disturbance of the economy of the EEA EFTA State concerned, on the one hand, and the appropriateness, necessity and proportionality of the aid to address it, on the other. It also requires taking into account the possibly systemic importance and position of the beneficiaries and the sector concerned, and any safeguards proposed to avoid undue negative effects on competition and trade between EEA States.
- (56) For the avoidance of doubt, ESA notes that the 2013 [Banking Guidelines](#)<sup>17</sup> are not applicable to the measure. Although some of the insurers that fall under the measure may be labelled as credit institutions, it is not appropriate to apply the principles of the Banking Guidelines by analogy to the current situation.<sup>18</sup> This is because the measure is neither intended nor designed to address concerns related to financial stability, liquidity or the solvency needs of the insurers.

## 7.2 Appropriateness of state aid

- (57) State aid must be an appropriate instrument. In order to be appropriate, the aid must be well targeted to its objective, which in this case is to remedy a serious disturbance in the Norwegian economy.
- (58) The measure must be seen in the light of the extreme situation created by the COVID-19 pandemic. The strict restrictions and measures introduced by the Norwegian authorities have entailed a widely felt economic shock in the tourism sector and the package travel sector specifically. Important parts of the Norwegian economy have been hard hit.
- (59) The package travel sector is particularly vulnerable to this type of economic shock. As set out in paragraph (5) above, package travel organisers are(5) under a legal obligation to obtain a Guarantee, in order to provide their services.

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<sup>16</sup> See [Commission Decision](#) of 4 February 2021 in Case No. SA.60521 (2020/N), C(2021) 849 final, State Guarantee to package travel organisers and facilitators on linked travel services.

<sup>17</sup> EFTA Surveillance Authority Decision No 464/13/COL of 27 November 2013 amending, for the 91st time, the procedural and substantive rules in the field of State aid by introducing a new chapter on the application, from 1 December 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ( 'Banking Guidelines 2013' ), OJ L 264, 4.9.2014, p. 6–21 and EEA Supplement No 50, 4.9.2014, p. 1

<sup>18</sup> See point (26) of the Banking Communication.

Therefore, if there is no offer of Guarantees, or affordable Guarantees, on the market, package travel organisers are unable to operate.

- (60) The normal risk remediation technique that insurers have employed and will continue to employ, in the absence of the notified measure, is to remove or significantly reduce their offer of Guarantees, or to significantly increase their premiums. Indeed, insurers in Norway have already reduced or withdrawn their offer of Guarantees, due to the high risks involved. This results in mandatory Guarantees in practice becoming unavailable for several package travel organisers. A continued reduction or withdrawal of Guarantees would likely lead to further negative effects for the Norwegian package travel sector and the Norwegian economy as a whole. This is what the measure intends to avoid. The measure seeks to avoid this consequence by assuming some of the risk associated with the Guarantees, and so making it more commercially interesting for insurers to provide Guarantees to the package travel organisers.
- (61) By Norway assuming 50% of the risk associated with Guarantees, insurers can continue to provide Guarantees to package travel organisers without assuming too much risk. The package travel organisers will then be in a position to obtain, or keep, sufficient Guarantees to continue operating and providing their services. ESA considers that the measure is suitable to have the effect of maintaining a coverage volume for package travel organisers despite the COVID-10 outbreak.
- (62) Considering that the measure directly addresses the imminent risk of a significant further disturbance and deterioration of the economic situation in Norway, ESA finds that the measure is appropriate.

### **7.3 Necessity of the state intervention**

- (63) A state aid measure is necessary if it is targeted towards situations where aid can bring about a material improvement that the market cannot deliver itself. Moreover, the aid measure must, in its amount and form, be necessary to achieve the objective. This implies that it must be the minimum aid amount necessary to reach the objective.
- (64) The measure does not go further than what is necessary to obtain the objective of maintaining access to Guarantees.
- (65) First, the reinsurance provided by the Norwegian State for the insurance of Guarantees can only be granted to the insurers until 31 December 2021. The measure is therefore in line with paragraph 25(c) of the Temporary Framework, which was extended until 31 December 2021 to allow EU Member States to continue to support the economy during the crisis.
- (66) Second, the duration of the measure is limited in time. The reinsurance covers losses that are triggered, as a result of insolvency, only until 31 December 2022. This duration provides the necessary degree of predictability for insurers and ensures that the package travel organisers are granted access to the Guarantees, as long as this is necessary for market conditions to normalise. ESA notes that the measure will still have a duration of less than six years. This is in line with paragraph 25(f) of the Temporary Framework, where the condition is that the duration of the guarantee is limited to maximum six years.

- (67) Third, the reinsurance provided by the Norwegian State covers only Guarantees for SME package travel organisers, mainly because large package travel organisers have experienced problems related to the provision of Guarantees to a lesser extent. In addition, these SME package travel organisers are more important for other actors in the Norwegian tourism industry and therefore more important to the economic recovery in Norway.
- (68) Fourth, package travel organisers already in difficulty on 31 December 2019 are excluded from entering into new Guarantee Agreements under the measure. Moreover, as confirmed by the Norwegian authorities, it is highly unlikely that package travel organisers that were already in difficulty on 31 December 2019 have either survived the economic downturn or still have valid Guarantee Agreements. ESA therefore considers that the measure is well targeted to address only those package travel organisers that have been negatively affected by the COVID-19 outbreak.
- (69) In light of the above, ESA considers that the measure is limited to the minimum necessary to achieve its objective.

## **7.4 Proportionality**

### *7.4.1 Introduction*

- (70) The positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measure's objectives. In the following, ESA will assess the proportionality of both the direct and the indirect aid involved in the measure.

### *7.4.2 Direct aid*

- (71) The package travel organisers, as policyholders, will continue to pay a premium under the measure. The remuneration paid by the policyholders, as direct beneficiaries, limits distortion of competition.
- (72) As set out in paragraph (28), insurers keep 50% of the risk in their portfolios. This will ensure that insurers carry out realistic and market-based assessments of the financial position on the individual package travel organisers. This way, the measure ensures that the package travel organisers pay the same premiums that they would pay under normal market conditions, and thereby limits the risk of a disproportionate advantage to the direct beneficiaries.
- (73) Based on the above considerations, ESA considers that the aid to the direct beneficiaries is proportionate to reach the intended goal, while minimising the distortive effects on competition.

### *7.4.3 Indirect aid*

- (74) The financial intermediaries, which are banks and insurance companies operating on the regular markets for banking and insurance, will in principle be able to benefit indirectly from the measure. It therefore needs to be ensured that insurers, to the largest extent possible, pass on the advantages of the public guarantee to the final beneficiaries. According to paragraphs 30 and 31 of the Temporary Framework, there need to be safeguards in place in order to achieve this result. This includes having a mechanism that ensures that the advantage is passed on, for example in the form of (i) higher volumes of financing, (ii) riskier portfolios, (iii)

lower collateral requirements, or (iv) lower guarantee premiums. ESA finds that Section 3.4 of the Temporary Framework can be applied by analogy in this case.

- (75) At the outset, it is important to keep in mind that any indirect aid is but an inevitable side effect of the State's intervention in a dysfunctional market by assuming the role of a reinsurer of an increasingly unmarketable risk. Moreover, the measure introduces several safeguards in relation to the possible indirect aid in favour of the financial institutions.
- (76) First, the measure will not entail a higher volume of business for the insurance sector, since the measure is not designed to expand the business of insurers, but to maintain the same level as under normal market conditions, and to prevent further deterioration.
- (77) Second, the measure is designed in a manner which ensures that there is a distribution of losses and risk between insurers and the State, and that the banks and insurance companies do not benefit from the measure more than necessary.
- The Norwegian authorities cover only 50% of the losses under the Guarantee portfolios of insurers that opt to join the measure. Insurers therefore still retain part of the risk that they assume under normal market conditions.
  - The coverage provided must be seen in relation to the remuneration provided. In return for the reinsurance, insurers do not get to keep the entirety of the premiums that are charged to package travel organisers. The income distribution reflects the risk distribution between the Norwegian authorities and the insurers. The Norwegian authorities will therefore collect 50% of the premiums on the portfolios under the measure, with a deduction of payment for administrative charges. The remuneration would thus result in insurers passing on up to 50% of their profits net of operating cost on their activity even before the materialisation of any losses.
  - The proposed portfolio-based measure entails an equal risk relief for all the Guarantees that they provide, meaning that both the safer and the riskier Guarantees in the portfolios of insurers fall under the measure.
  - Insurers will be required to report on the actual premiums charged, and on premiums they would have charged in the absence of the Guarantees. This enables the Norwegian authorities to monitor that the measure results in lower premiums than otherwise would have been imposed, in the absence of the reinsurance.
- (78) In light of the above, ESA finds that there are safeguards in place to ensure that the advantage is to the largest extent possible passed on to the direct beneficiaries, and that the indirect aid to insurers is limited to the minimum necessary.

#### *7.4.4 Conclusion*

- (79) ESA concludes that the design of the measure ensures that any distortion of competition will be limited to the minimum necessary to reach the measure's objectives. Therefore, ESA concludes that the measure is proportionate.

## 7.5 Compliance with relevant EEA law

- (80) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution (“[BRRD](#)”),<sup>19</sup> in the event that an institution would meet the conditions for the application of that Directive, the measure does not appear to violate any intrinsically linked provisions of BRRD.
- (81) In particular, aid granted by Norway to non-financial undertakings as final beneficiaries, which is channelled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions. Nevertheless, any such indirect aid granted under the measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure is to remedy the shortage of Guarantees faced by package travel organisers, undertakings that are not financial institutions, and to ensure that the disruptions caused by COVID-19 do not undermine the viability of such undertakings, especially SMEs. As a result, aid granted under the measure does not qualify as extraordinary public financial support under Article 2(1)(28) BRRD.
- (82) Moreover, the measure introduces safeguards in relation to any possible indirect aid in favour of the credit institutions or financial institutions involved, ensuring that the financial intermediaries, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries.
- (83) Consequently, ESA has no indications that the measure, the conditions attached to it, or the activity it finances entail a violation of relevant EEA law.

## 8 Reporting and transparency

### 8.1 Monitoring and reporting obligations

- (84) Finally, although the measure is notified directly under Article 61(3)(b) of the EEA Agreement, Norway has confirmed that it will respect the applicable monitoring and reporting obligations laid down in the Temporary Framework. The Norwegian authorities have further confirmed that aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected.

### 8.2 Transparency

- (85) The Norwegian authorities have confirmed that any aid award exceeding EUR 500 000, will be published in the [national transparency register](#). Therefore, the measure fulfils the transparency requirements.

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<sup>19</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2015 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, (OJ L 173, 12.6.2014, p. 190–348) as incorporated and amended to the EEA Agreement by Joint Committee Decision 21/2018 on 9 February 2018 and entered into force in the EEA on 1 January 2020 following the lifting of constitutional requirements.

## 9 Conclusion

- (86) 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 ESA has no doubts that this aid is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(b), it has no objections to the implementation of the measure.
- (87) 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,

Bente Angell-Hansen  
President  
Responsible College Member

Frank J. Büchel  
College Member

Högni S. 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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