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EFTA Surveillance Authority
Rue Belliard 35
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Reykjavík, 30 September 2011
Tilv.: EVR10050106/3.5.1

Re: Reasoned Opinion (RO) of the Authority, dated 10 June 2011, concerning alleged failure of Iceland to comply with obligations under Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes and/or Article 4 of the EEA Agreement

1. INTRODUCTION

Reference is made to the Reasoned Opinion of the EFTA Surveillance Authority, delivered on 10 June 2011, on the above mentioned matter. As previously argued in its response to the Authority on 2 May 2011, the Government of Iceland maintains the position that it is not in breach of its obligations under Directive 94/19/EC and/or Article 4 of the EEA Agreement. The Reasoned Opinion does not change that position.

The conclusion of the opinion is that Iceland is in breach of its obligations by failing to ensure payment of the minimum amount of compensation to Icesave depositors within the time limits laid down in Article 10 of the Act. The Authority then requires the Government to take the necessary measures to comply within three months following notification.

With respect, the Government finds the Authority's position unclear as to the measures the Government is required to take: On one hand it seems that the Authority is of the opinion that the breach was already completed in October 2009 but on the other hand the President of the Authority's College has been quoted in the media stating that if Iceland had agreed with governments of the UK and the Netherlands on state guarantee and interest payments on the claims made by these governments in the winding-up proceedings in Landsbanki, the case would most likely have been closed.

It runs from the above, that the actions and position of the British and Dutch governments is admittedly a factor in the overall assessment of this case. The Authority states that allegations of breaches by other EEA States *"have no legal bearing on the present case"*. At its core the case is about a deposit scheme failing to deliver results in times of trouble; who is responsible, and the consequences of the scheme failing to perform. The actions of the UK and the Netherlands are very much a part of the overall assessment and the Authority has acknowledged this by making the so called Icesave agreements a condition for closing the case.

As regards the facts stated in the Reasoned Opinion the Government notes that the Authority seems to rely on the 11 October 2008 Memorandum of Understanding (with the Netherlands) as an important proof of the Government's unconditional intent and willingness to guarantee a loan to the Icelandic Guarantee Fund. It must be emphasised that this Memorandum of Understanding was never given any legal effect and was in fact soon thereafter withdrawn by the Government. No party to the Icesave dispute between Iceland, the United Kingdom and the Netherlands has suggested the Memorandum of Understanding to have any legal effect. Depositors in the Netherlands and the United Kingdom were compensated by the respective guarantee funds long after it became clear that funding would not be based on a loan from the two Governments to the Icelandic deposit guarantee fund (hereafter referred to as TIF).

The Government also wishes to add that on 8 September 2011 the Board of TIF adopted a decision to the effect that the funds of TIF will be distributed to depositors, subject to certain conditions set out in the resolution. The board decision also states various legal uncertainties and complications pertaining to the payments from the fund and TIF will invite depositors to express their views as regards the proposed process. The Government will inform the Authority of further development. Enclosed is a copy of the TIF board decision but the Authority is asked to keep its contents confidential for the time being as the decision has not

yet been made public. It is expected that TIF will make its decision public over the course of next 1-2 weeks.

The Government awaits further action by the Authority in the case and reserves all right to submit further legal arguments, pertaining to the main subject matter as well as procedural issues, and correct factual errors. The Government also refers to its previous arguments in the case, most recently set out in its reply to the Letter of Formal Notice. At this stage the Government wishes only to comment on the following issues.

2. THE LANDSBANKI ESTATE – PAYMENTS TO DEPOSITORS

2.1. Latest developments

The Government would like to draw attention to recent developments in the estate of Landsbanki (the bank responsible for the Icesave accounts). Expected recovery rate for depositor creditors has improved significantly and there is now much more certainty around the value of assets in the estate. Latest information reveals full recovery for depositor creditors within a relatively short time.

According to Q2 2011 financial information from the Resolution Committee and Winding-Up Board of Landsbanki, announced on 1 September 2011, it is now expected that the value of the assets of Landsbanki exceed the total amount of priority claims. This does not only relate to the *principal* of these claims, the Government also wishes to remind the Authority that according to rulings of the District Court of Reykjavik (under appeal) deposit creditors will receive *penalty interest* on their claims from October 2008 until 22 April 2009, and these accrued interests rank as priority claims in the estate of Landsbanki. This amounts in the Dutch case to 6% and in the British case to 8%, reflecting the different penalty rates in the respective jurisdictions.

It draws from the above that current expectation is that depositor creditors will not only receive the minimum guaranteed amount, they will be compensated for all their deposits and for the time value of money to a degree that still remains to be finally determined.

Supreme Court judgements regarding constitutionality of certain parts of the Emergency legislation and the question of interest rate for deposits will be handed down within few

weeks. The Winding-Up Board of Landsbanki has informed the Government that payments can be effected to creditors in 3-5 weeks' time after the date of judgement.

2.2. The assets of the Landsbanki and expected pay-out schedule

Regardless of the process in this case the Authorities of the United Kingdom and the Netherlands stand to receive payments from the estate of Landsbanki. The estate holds the majority of the assets of the collapsed bank and is subject to orderly winding up process. Based on reports from the Landsbanki Winding-Up Board the Government is confident that an amount equivalent to most or all of the depositor claims covered by the minimum guarantee will be paid over the course of next 2 years.

The most important assumptions as regards recovery rate are as follows.[1]

- The current estimate by Landsbanki's Resolution Committee is that *all priority claims* including accrued penalty interests from October 2008 until 22 April 2009) will be recovered.
- About half of the recoveries will be paid out to depositor creditors in 2011-2012.
- Recovery estimates have been steadily increasing, by 2-3% each quarter. Current estimate (Q2 2011) suggests that *general unsecured creditors* stand to receive a considerable amount of their claims (13 billion ISK).

The assets of the estate are now comprised of: *Cash and bank bonds* (now amounting to *67%* of expected recoveries); *Loans to customers* (now amounting to *17,5%* of expected recoveries), already heavily written-down from previous book value. The loans were mostly extended to UK companies; *Equity, derivative claims, bonds and misc.* (now amounting to about *15,5%* of expected recoveries). Uncertainty is greatest regarding the quality of this class of assets. However, recent news about the proposed sale of the estate's holding in the UK retail chain Iceland Foods indicates that these assets are currently undervalued. The Government is optimistic that in due course all depositor claims will be paid in full with interest until 22 April 2009 (the reference date for cut-off as regards interest). The Government follows the winding-up of Landsbanki closely and will update its estimate as new financial information become available in the coming weeks and months.

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[1] See Financial information for Q2 2011 on the website of LBI http://lbi.is. The information included in Iceland's reply to the LFN (2 May 2011) were based on results of Q1

The Government wishes to emphasise in particular:

- Within 2-4 weeks the Supreme Court will have finally determined the legality and constitutionality of the priority claims by the deposit-guarantee schemes of the United Kingdom and the Netherlands, lodged in the winding up proceedings. The court will also decide upon the interest accrued on these claims and associated costs.

- The estate is preparing the sales process of its largest single asset later this year, which will affect the recovery and pay-out rate to a considerable degree. The expectation is therefore of an upward revision from the current estimated recovery rate and faster pay-out process.

- Landsbanki is expected to commence payment to the deposit insurance schemes of the United Kingdom and the Netherlands of considerable amounts towards their claims late November this year. According to information from Landsbanki ISK 453 billion were available in cash at the end of second quarter 2011. It is expected that around 400 billion will be paid towards these claims in the first interim payment from the estate. It is possible that clearer estimates and a schedule for full payment will be available soon after the judgements have been handed down by the Supreme Court.

2.3. Comparison between recovery for depositors under the measures of the Icelandic Government (Emergency legislation – bank resolution) vs. compensation under the guarantee scheme without bank resolution and priority for deposit claims.

The Reasoned Opinion discusses the measures taken by the Icelandic Government during the crisis and concludes that the actions favoured one group of depositors. When looking at the facts of the case it is important to realise the real economical effect of the actions for the depositors and compare different scenarios that could have awaited those creditors.

In **Appendix A** (Scenario calculations) the Government has demonstrated the real effect of increased recovery rate from the Landsbanki Estate for the Governments of the United Kingdom and the Netherlands. Comparison is made between the economical effects of a) all deposits moved to priority ranking and receiving payments without involvement of the TIF (current regime), as opposed to b) TIF having paid the minimum guaranteed amounts to depositors in October 2009 (and the remaining amount being subject to the winding-up process and ranking as general unsecured claim).

The analyses reveal the following:

Scenario A – current regime – bank resolution – no involvement of DGF

The figures show that for the Dutch deposit holders the NPV recovery amount under scenario A (current regime) gives a figure of 1.546 million EUR. For the UK deposit holders the comparable amount is 4.204 million EUR.

Scenario B – No emergency law set and the minimum retail claims paid out in 2009

In this scenario estimation is made of the NPV of a payment for the minimum guaranteed amount in October 2009 and the remainder of depositor claims paid in instalments until the end of year 2013. In this scenario we also assume that the "recovery rate" for the deposit claims is approximately 36% (as is the current estimate based on the value of assets in the Landsbanki Estate and all depositor claims ranking as general unsecured claims).

The calculations show that net present value of recovery amount in October 2009 would be 1.434 million EUR for the Dutch side and 3.097 for the UK side.

Notwithstanding these figures being subject to some uncertainties, it seems that according to the best available information at this point in time, the measures of the Government – consisting of the Emergency Legislation and the implementation by the Financial Supervisory Authority – will deliver a considerably better overall economical result for the deposit holders in Amsterdam and London than the guarantee scheme ever could have.

3. DIRECTIVE 94/19/EC – OBLIGATION OF RESULT

The Government notes the argument made by the Authority in chapter 5 of the Reasoned Opinion; at its essence that the Directive imposes upon the EFTA States an obligation to ensure compensation of depositors up to at least EUR 20.000, irrespective of the reasons for the deposits being unavailable. And that the Directive does not provide for any exemptions.

The Government refers to its previous arguments as regards the "obligation of result". The "obligation" of the Member State does not extend to funding a guarantee scheme – and most certainly not in case of a systemic failure. It is widely acknowledged that the Deposit

Guarantee Schemes were not designed to cope with systemic failure.[2] A failure by the DGS in such situation is therefore not in itself a failure of the respective government, leading to liability for funding as the Authority seems to conclude. If the failure is too large for the DGS to cope with only alternative measures can prevent systemic collapse and maintain necessary confidence in the financial system.

Reference to incomparable case law and reference to the concept of "obligation of result" does not change the very principle of the deposit protection schemes within the EU and their shortcomings, which are very well documented. Recent legislative process within the EU pertaining to the proposal for a new Directive on Deposit Guarantee Schemes appreciates this fact and an attempt is made to address the very fact that *"schemes have proved to be underfinanced in times of financial stress".*[3]

When discussing the possible impact of increasing the mandatory guarantee from EUR 20.000 to 100.000 on *Member State budgets* in the legislative proposal, a report prepared by the EC Commission[4] included the following conclusion:

> "The Commission has been tasked to assess retroactively whether this increase is appropriate and whether it is viable for Member States. In this context, it has to be borne in mind that DGS are financed by banks and the Commission intends to maintain this requirement. That means that the budget of Member States is not directly concerned by the DGS Directive. The recent crisis has shown that in a systemic crisis, DGS may reach their limits. However, even if in such cases government stepped in … this would not be triggered under a legal obligation in the DGS Directive and viability for Member States is therefore not subject of this impact assessment".

The citation shows clearly that (a) it is acknowledged that DGS are not funded to cope with systemic failure and that (b) the DGS Directive in itself does not pose an obligation on Member States to step in and fund the DGS. If the banking system is unable to fund the DGS the governments have to consider how to best preserve financial stability, and it is also generally acknowledged that there may be other and more suitable ways to ensure financial

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[2] The insured deposits in the London and Amsterdam branches of Landsbanki were equivalent to 650 billion ISK. These figures represented over 20% of insured deposits. In comparison the current proposal for a new deposit Directive has the objective of being able to cope with „Biggest failure" consisting of 7,5% of „eligible deposits". See EC Commission Staff Working Document – IMPACT ASSESEMENT Accompanying document to the Proposal for Directive …/…/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Deposit Guarantee Schemes, p. 53-54

[3] EC Proposal, dated 12.7.2010, (Explanatory Memorandum p. 2)

[4] i.e. EC Commission Staff Working Document – IMPACT ASSESEMENT Accompanying document to the Proposal for Directive …/…/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Deposit Guarantee Schemes, p. 8:

stability and consumer confidence, all depending on the circumstances and the graveness of financial instability.

Voluntary actions of governments are common, including i.a. bail-out arrangements and bridge banks. Such actions to preserve financial stability run parallel to the deposit guarantees but are based on completely different legal basis.[5] The Authority is therefore mistaken in concluding that failure of a DGS automatically constitutes a failure of a Member (or a Contracting) State, leading to state liability, eventually financed by ordinary taxpayers, as seems to be the core of the Authority's legal argumentation.

One of the main features of the EC/EEA deposit guarantee system was that it was to be funded by the banking industry and not by taxpayer money. This is evident from the purpose of the Directive, i.e. market integration, facilitation of competing cross-border banks etc. The schemes in Europe are either pre-funded (ex-ante) in a similar fashion as the Icelandic DGS or post-funded (ex-post). For obvious reasons no scheme is pre-funded to compensate all depositors in a complete banking collapse, as it would then have to have cash available amounting to at least all guaranteed deposits in all banks within its jurisdiction. Post-funding in such case would be impossible as well as no banks would be left to fund the scheme. EEA deposit insurance schemes were never intended to withstand complete collapse of entire nations banking system and no member state has ever set up a scheme with the resources to do that. No government is liable or legally obligated to fund the system if such events unfold. The obligation is confined to taking measures to achieve a result, but does not translate into a funding result if the means are insufficient.

The Government refers to its previous arguments in general but reiterates that no authority confirms the view that EEA States bear unconditional "obligation of result" as regards compensation to depositors. To the contrary, case law – with resemblance to the case at hand – seems to imply that no such obligation of result exists.

The Government would also like to draw attention again to the new EU proposal for a directive on deposit guarantee schemes (recast). In addition to introducing a new ex-ante financing of the DGS schemes in Europe the proposal addresses the scenario when ex ante financing is insufficient. As a first step DGS members will be required to pay extraordinary contribution of up to 0,5% of eligible deposits; as a second step a mutual borrowing scheme

[5] See i.a. Opinion of the European Central Bank of 16 February on the proposal for the new Directive on deposit Guarantee Schemes, Official Journal of the European Union, volume 54, 31 March 2011, p. 3-4

(between DGS) may be activated; and as a third step the DGS should have alternative funding arrangements in place as a last resort.

Obviously these proposed changes address the structural shortcomings of the current system. Nothing in the current documents and debates relating to the legislative process seems to even suggest that Member States are directly responsible if DGSs are unable to obtain necessary financing. In case of systemic failure this obligation and discharge of it is even unimaginable and unachievable.

4. DISCRIMINATION

In its Reasoned Opinion, the Authority is of the view that by moving domestic deposits over to the new banks and not ensuring the minimum guarantee for foreign depositors, when taking the emergency measures in October 2008, the Icelandic Government breached Directive 94/19/EC, read in light of Article 4 EEA. The Authority expresses the view that the actions of the Government even constituted an independent violation of Article 4 EEA.

The submission refers to the actions of the Financial Supervisory Authority in Iceland ("FME") in October 2008, whereby certain assets and liabilities of the "old" banks were transferred to new entities in order to preserve minimum banking services in Iceland. FME based its decisions on Act no. 125/2008 ("Emergency law") passed by the Icelandic Parliament on 6 October 2008. With a new provision (Article 6), the Act also ensured that deposits would constitute priority claims in the case of financial institutions becoming insolvent.

The Government refutes the Authority's position and refers to detailed explanations of the emergency measures in previous correspondence with the Authority. The Government maintains its previous position on the legitimacy of these measures and wishes to emphasise that the emergency measures were necessary to prevent a complete collapse of Iceland's economy and salvage payment systems, domestically and internationally.

Despite the Authority's Reasoned Opinion, the Government fails to see how the measures it took can constitute discrimination based on nationality within the scope of the Directive, or that the actions of the Icelandic Government constituted a breach of the Directive, interpreted in light of Article 4 EEA.

In addition to its previous responses, the Government wishes to stress that the transfer of assets and liabilities of the old banks was an action to preserve financial stability. It is generally acknowledged that bank resolution measures may be used to protect depositors. Voluntary schemes implemented by each Member State – at their discretion and in different manner – are an important tool in maintaining depositor confidence and financial stability in serious situations. It is not evident that such action falls within the scope of Directive 94/19/EC.

Consequently the Government considers that the Directive does not cover the situation at hand as it does not regulate restructuring of the banking system. Domestic depositors have not had recourse to the Directive or any deposit guarantees scheme. The transfer of the liabilities of the banks was a part of another exercise of the Government as were the measures to ensure depositors protection through the priority of deposit claims. The Government therefore objects to the Authority's assessment, that the actions of the Icelandic Government represented discrimination, when the Directive is applied in light of Article 4 EEA.

The Governments of the Netherlands and the United Kingdom introduced *ad hoc* bank resolution measures towards the branches of Landsbanki in their respective countries along with other financial stability measures. The depositors in these countries and Iceland were therefore all subject to bank resolution or reorganisation measures, including compensation for deposits. The Directive does not limit such actions of governments.

Furthermore, the Authority has in its prior communications and decisions acknowledged the legality and necessity of these laws and implementing measures. [6]

In light of the above, the Government does not agree with the Authority's assessment of the comparability of the situation of domestic and non-domestic depositors and maintains its position that, when seen in the context of the Government's responses to the economic meltdown, domestic and non-domestic depositors cannot be considered to be in a comparable position. Furthermore, and in light of the above, the Government is also of the opinion that the Authority's refusal to assess any grounds of justification advanced by the Government,

[6] Here reference may be made to both the Authority's letters to the Government during the pre-litigation procedure (e.g. Authority's letter of 28 November 2008, p. 4-5, where the Authority concurs that the aim of maintaining a functioning domestic banking system is a legitimate one, inter alia for the purposes of effective flow of capital to and from the country. Reference is also made to Authority's decision of 15 December 2010, where, in the context of assessing the emergency measures the Authority found the objective of the emergency measures to be an overriding requirement in the general interest, suitable for attaining the aim of safeguarding the functioning of the domestic banking system and proportionate to that aim (the Authority's decision No 501/10/COL) paragraphs 89-95.)

relating to the financial stability measures is unfounded. In that respect, the Government would like to draw the Authority's attention to the fact that, as the Authority has acknowledged, Directive 94/19/EC is a minimum harmonisation directive. Consequently, the Government is of the opinion that case-law cited by the Authority does not support its contention, that the Government cannot advance its reasons for the alleged indirect discrimination pursuant to Directive 94/19/EC interpreted in light of Article 4 EEA.

In as much as the Authority has assessed the Government's submissions, it has, in the Reasoned Opinion, concluded by referring to case-law confirming that "mere economic grounds cannot serve as justification for restrictions to the fundamental freedoms".[7]

The Government maintains its previous position, that in the event of its measures being found to constitute *prima facie* indirect discrimination on grounds of nationality, they are justified by public interest objectives. The Government also maintains its position, that the measures were both necessary and proportionate to the objective of restoring a functioning and credible domestic banking system and hence the entire financial system in Iceland. The Government urges the Authority to consider Government's position as set out above, and in the government's previous explanations, before taking the case any further.

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The Government maintains its previous position that Article 4 EEA does not apply independently to the matter at issue, as the general prohibition of discrimination on grounds of nationality applies independently only to situations governed by EEA law for which the EEA Agreement lays down no specific provisions.

If Article 4 EEA were found to be applicable, the Government maintains its previous position, including the obvious possibility of advancing grounds relating to public interest objectives to justify allegedly indirectly discriminatory measures. The Government maintains its position that the functioning of the domestic banking system and the real overall economy in Iceland constitute such overriding requirements in the general interest.

The Government objects to the relevance of the cases the Authority relies on as regards the nature of grounds for justification (Case C-367/98 Commission v Portugal, Case E-1/04 Fokus Bank and Case E-109 the Authority v Liechtenstein). All these cases concern issues, incomparable with the gravity of the situation faced by Iceland. Case law from the Court of

[7] See, Reasoned Opinion, p. 23.

Justice recognises grounds for justification that while relating to economic concerns involve fundamental interest of society, such as the maintenance of the overall economy, society's institutions, essential public services, public policy and public security.[8]

CONCLUSION

As previously set out the Government is of the opinion that it did not breach the Directive or the EEA Agreement. The Government maintains that it sought all measures reasonably within its means to ensure deposit protection under the Directive, including a comparable outcome for deposit-holders in foreign branches as for deposit-holders in Icelandic branches.

The measures taken by the Government, in adopting the Emergency legislation and implementing it to cause the assets and liquidity of the banks to cover deposits, were taken with this objective in mind. This was not done through the deposit guarantee scheme but by using banking resolution measures to deliver the desired results. The necessity and legality of the measures have already been generally recognised by the Authority.

The Emergency legislation did not favour Icelandic citizens or depositors in the domestic branches; it was completely neutral in that respect. In fact the Governments of the Netherlands and the United Kingdom (and its taxpayers) gained the most from the change in ranking of claims, moving deposits from general claims to priority claims (as is now proposed for the UK in the "Vickers Report").

It would have been quite impossible for any deposit guarantee scheme to cope with a complete crash and the purpose of the Directive was not for the schemes to withstand crisis of that magnitude. The proposal for new Directive shows this clearly. It is therefore impossible that an "obligation of result" rests upon each Member State and contracting party to the EEA Agreement, translating into unlimited duty to fund the deposit guarantee scheme in times of big crisis. Such duty would jeopardize the economy and social order.

It is now clear that the sum of €20.000 will be paid to depositors and it is also clear that some interest will be paid on that amount, from the estate of the fallen bank. It is also clear that the actions of the Icelandic Government at the time of the crisis did not serve to undermine trust in the deposit insurance system in Europe – quite on the contrary they ensured that more

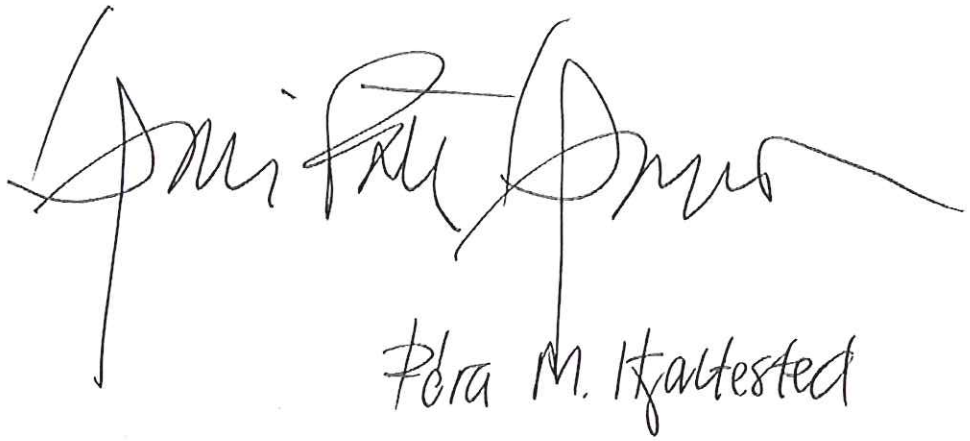
[8] See for instance Case 72/83 Campus Oil [1984] ECR 2727

money would be available to cover deposits held by depositors in EEA member states than would otherwise have been the case. The bankruptcies of the three big Icelandic banks will be among the 10 biggest corporate bankruptcies in world history. No depositor is likely to lose money on these bankruptcies.

The Icelandic Government actions also ensured that the UK Government will not bear any cost of guaranteeing payment of all deposits in excess of the minimum guarantee. The actions have thus helped the UK Government in maintaining trust in its own financial system, beyond what the UK Government itself expected. It is worth noting that in October 2008 UK Treasury officials warned the Chancellor against guaranteeing more than the British minimum guarantee, as they expected the money would never be recovered.

The Government continues to be prepared to provide the Authority with all necessary information in relation to the effecting of payments from Landsbanki estate. As previously discussed assumptions regarding recovery rate and payment schedule will hopefully be clarified within few weeks.

The Government of Iceland strongly urges the Authority to close the case.



Appendix A – Scenario calculations

In the following table are the underlying assumptions concerning claims to the LBI estate.

	EUR/GBP
Dutch minimum retail claims (EUR)	1.265
British minimum retail claims (GBP)	2.183
Total minimum retail claims (EUR)	**3.809**
Dutch top-up retail claims (EUR)	409
British top-up retail claims (GBP)	2.299
Total top-up retail claims (EUR)	**3.088**
Dutch interest retail claims (EUR)	33
British interest retail claims (GBP)	176
Total interest retail claims (EUR)	**238**
Dutch interest plus retail claims (EUR)	1.707
British interest plus retail claims (GBP)	4.658
Total interest plus retail claims (EUR)	**7.135**
Total claims (EUR)	20.254
Total claims without wholesale and money market claims (EUR)	19.356
GBP/EUR exchange rate	*1,17*

Scenario A – Emergency law set and the LBI estate finishes payments in 2013

The Dutch retail claims (interest and principal) amount to about 1.707 million Euros. Thereof are interest claims based on 6% penalty rates from the date of the bankruptcy of LBI to 22nd of April 2009 about 33 million Euros. In the current situation the emergency law applies and repayments to the Dutch Treasury will be in the form of payments from the LBI estate. Because of the emergency law the claims are priority claims and the recovery ratio is about 100%. Let's assume that the final payment will be according to the financial statement from the LBI WuB except that the final payment will take place 31st of December 2013. Then there will be especially high payments in 2011 and 2013 and the recovery will be 100% which means the Dutch Treasury will be paid a total amount of 1.707 million Euros. To be able to compare this number with a scenario where the Dutch Treasury would have received a payment covering 100% of the minimum retail claims (not the top-up claims) as soon as 23rd of October 2009 it is logical to calculate the NPV value of the 1.707 million Euro cash flow. The rates used to calculate the NPV are the interest

rates used in previous Icesave negotiations or 3%. The NPV value in 23rd of October 2009 is then 1.546 million Euros. The table below shows the cashflow and NPV recovery amount.

Date	23.10.2008	23.10.2009	31.12.2010	31.12.2011	31.12.2012	31.12.2013
Outstanding claims	1.707	1.707	1.707	1.009	984	0
LBI estate recovery		0	0	-698	-25	-984
Total recovery amount		-1.707				
NPV recovery amount		**-1.546**				

The British retail claims (interest and principal) are about 4.658 million pounds. Thereof are interest claims based on 8% penalty rates from October 2008 until 22nd of April 2009 about 176 million pounds. In the current situation the emergency law applies and repayments to the British Treasury will be in the form of payments from the LBI estate. As previously mentioned, because of the emergency law the claims are priority claims and the recovery ratio is about 100%. Let's use the same assumptions as with the Dutch claims about payments from the LBI estate. Then there will be especially high payments in 2011 and 2013 and the recovery will be 100% which means the British Treasury will be paid a total amount of 4.658 million pounds. To be able to compare this number with a scenario where the British Treasury would have received a payment covering 100% of the minimum retail claims (not the top-up claims) as soon as 23rd of October 2009 it is logical to calculate the NPV value of the 4.658 million pound cashflow. The rates used to calculate the NPV are the interest rates used in previous Icesave negotiations or 3,3%. The NPV value in 23rd of October 2009 is then 4.204 million pounds. The table below shows the cashflow and NPV recovery amount.

Date	23.10.2008	23.10.2009	31.12.2010	31.12.2011	31.12.2012	31.12.2013
Outstanding claims	4.658	4.658	4.658	2.632	1.923	0
LBI estate recovery		0	0	-2.025	-710	-1.923
Total recovery amount		-4.658				
NPV recovery amount		**-4.204**				

Scenario B – No emergency law set and the minimum retail claims paid out in 2009

In a scenario where the Dutch Treasury wold have been paid the minimum retail and interest claims in 23rd of October 2009 the payment would have been **1.298 million Euros**. Moreover, in such a scenario the Dutch Treasury would receive payments from the LBI estate because of the top-up claims. In this case the emergency law would not have been set and the claims towards the LBI estate would not have been priority claims. Thereby the top-up claim for the Dutch Treasury, **409 million Euros**, as a ratio towards the total claims (except wholesale and money market) of 19.356 million Euros would be about 2%. The recovery ratio from the LBI estate for the top-up claims would be about 36%. The upside of this cashflow is how frontloaded it is, especially in 2009, but the downside is the low recovery ratio for the

top-up claims. The outcome is a total sum of 1.448 million Euros to the Dutch Treasury. To be able to compare this number with scenario A it is logical to calculate the NPV value for the 23rd of October with the 3% interest rate of the previous Icesave negotiations. That results in an amount of **1.434 million Euros** which is lower than the 1.546 million Euros in scenario A. The conclusion is that in the current scenario the Dutch Treasury is likely to receive a higher amount than if no emergency law had been set and if the minimum retail and interest claims had been paid out in 2009. The table below shows the cashflow and NPV recovery amount. The table below shows the cashflow and NPV recovery amount.

Date	23.10.2008	23.10.2009	31.12.2010	31.12.2011	31.12.2012	31.12.2013
Outstanding claims	1.707	409	409	302	300	196
LBI estate recovery		-1.298	0	-56	-2	-92
Total recovery amount		-1.448				
NPV recovery amount		**-1.434**				

In a similar scenario for the British Treasury where the minimum retail and interest claims wold have been paid out in 23rd of October 2009 the payment would have been **2.359 million pounds**. Moreover, in such a scenario the British Treasury would receive payments from the LBI estate because of the top-up claims. In this case the emergency law would not have been set and the claims towards the LBI estate would not have been priority claims. Thereby the top-up claim for the British Treasury, **2.299 million Euros**, as a ratio towards the total claims (except wholesale and money market) of 19.356 million Euros would be about 12%. The recovery ratio from the LBI estate for the top-up claims would be about 36%. The upside of this cash flow is how frontloaded it is, especially in 2009, but the downside is the low recovery ratio for the top-up claims. The outcome is a total sum of **3.178 million pounds** to the British Treasury. To be able to compare this number with scenario A it is logical to calculate the NPV value for the 23rd of October with the 3,3% interest rate of the previous Icesave negotiations. That results in an amount of **3.097 million pounds** which is lower than the 4.204 million pounds in scenario A. The conclusion is that in the current scenario the British Treasury is likely to receive a higher amount than if no emergency law had been set and if the minimum retail and interest claims had been paid out in 2009. The table below shows the cash flow and NPV recovery amount.

Date	**23.10.2008**	**23.10.2009**	**31.12.2010**	**31.12.2011**	**31.12.2012**	**31.12.2013**
Outstanding claims	4.658	2.299	2.299	1.958	1.846	1.479
LBI estate recovery		-2.359	0	-341	-112	-367
Total recovery amount		-3.178				
NPV recovery amount		**-3.097**				