



## Glossary

### **The 2008 financial crash in Iceland (#)**

In October 2008 Iceland was one of the first countries to be seriously hit by the international financial crisis. The consequences were immediate. Iceland's three largest banks, around 85% of its banking system, collapsed in just a few days. In the next six months almost all other financial institutions in the country either collapsed or underwent restructuring. During this period the country's stock market was effectively wiped out, unemployment rose rapidly and the Icelandic Krona plummeted, forcing Iceland to implement capital controls. House prices collapsed, inflation spiralled, corporate and household insolvencies multiplied. This triggered an economic crisis that led to Iceland seeking the assistance of the International Monetary Fund.

### **Icesave (#)**

Icesave was a high interest savings account brand owned by Landsbanki, an Icelandic private bank operating in the UK and Netherlands. The bank offered high interest rates to depositors and operated under EU/EEA financial regulations. Following the collapse of the three main banks in Iceland in October 2008, accounting for 85% of the banking system, Landsbanki went into receivership and Icesave depositors found themselves unable to access their accounts. At the time of the collapse, the depositor claims of Landsbanki in the UK and the Netherlands amounted to 44% of Iceland's GDP in 2008, 138% of government revenue in that year and 160% of the currency reserves held by the Central Bank of Iceland at the end of October 2008. By late 2008, all UK retail account holders in the UK had received (or in a very small numbers of cases, declined) compensation payments from the UK Government, to the full value of their deposits. In the Netherlands, the Government had paid all private and wholesale account holders up to €100,000 per account. That compensation was paid under the British and Dutch deposit-guarantee schemes. Subsequently, Iceland, the UK and the Netherlands entered into negotiations on repayments.

### **ESA's application against Iceland in the EFTA Court (#)**

The argument of ESA is twofold. First, ESA argues that by failing to ensure payment of compensation to Icesave depositors holding deposits in Landsbanki's branches in other EEA States within the time-limits laid down in the Directive, Iceland is in breach of its obligations under the Deposit Insurance Directive. Second, ESA submits that, even if, contrary to its argument, the provisions of Directive 94/19 are interpreted as not imposing obligations of result, Iceland is in breach of Articles 4(1) and 7(1) of the Directive and/or Article 4 EEA by treating depositors with domestic accounts differently to depositors with accounts held at Landsbanki branches in other EEA States. The former received full protection while the latter were left without any or any comparable protection.

### **Iceland's defense (#)**

Regarding the alleged Directive obligation Iceland contends, in essence, that the Directive imposes no obligation on the State to use its own resources in order to guarantee the pay-out of a

deposit-guarantee scheme in the event that “all else fails”. The obligations incumbent upon the State are limited to ensuring the proper establishment, recognition and a certain supervision of a deposit-guarantee scheme. In the alternative, Iceland submits that even if the Directive did impose strict obligations upon the State to fund the guarantee scheme in the event of its collapse, which is disputed, Iceland was prevented from doing so by force majeure.

Regarding the alleged discrimination, Iceland submits that it did not breach the principle of non-discrimination. Iceland contends that ESA's application does not argue for equal treatment. Instead ESA argues for different treatment of allegedly comparable situations. As such the basis of the claim is incoherent. ESA has also failed to identify the legal basis for the application of the rules on non-discrimination contained in the EEA Agreement to the specific facts of this case. Furthermore, ESA's argument amounts to an impermissible attempt to extend the specific requirements of the Directive. Even if any prima facie discrimination occurred, which Iceland disputes, it was none the less justified.

### **Deposit Guarantee Directive (#)**

No bank, whether sound or ailing, holds enough liquid funds to redeem all or a significant share of its deposits on the spot. This is why banks are susceptible to the risk of bank runs if depositors believe that their deposits are not safe and try to withdraw them all at the same time. This can seriously affect the whole economy. If, despite the high level of prudential supervision, a bank has to be closed, the relevant Deposit Guarantee Scheme (DGS) reimburses depositors up to a certain ceiling, thereby meeting depositors' needs. DGSs also save depositors from having to participate in lengthy insolvency proceedings, which usually lead to insolvency dividends that represent only a fraction of the original claim. The Deposit Guarantee Schemes Directive (DGSD), first adopted in 1994, governs the operation of deposit guarantee schemes across the European Economic Area. It requires all states – including the three EEA/EFTA States – to set up a scheme such as a fund (or some other kind of mechanism) to ensure that depositors receive a minimum payment in the event that they lose access to their deposits, if the bank goes bankrupt. In the context of this case, the relevant minimum amount of payment is €20 887 for each depositor.

### **EFTA Surveillance Authority (ESA) (#)**

The EFTA Surveillance Authority monitors and seeks to enforce compliance with the EEA Agreement by the participating EFTA States: Iceland, Liechtenstein and Norway. In monitoring and enforcing ESA has a power similar to those of the European Commission. There is close contact and co-operation between the Commission and ESA. The two institutions oversee the application of the same laws in different parts of the EEA. ESA may initiate infringement proceedings against an EFTA State at the EFTA Court if it deems that a state has infringed a provision of the EEA Agreement.

### **The Depositors' and Investors' Guarantee Fund (TIF) (#)**

The Depositors' and Investors' Guarantee Fund (TIF) is a private foundation operating pursuant to Act No. 98/1999. The objective of the Fund is to guarantee a minimum level of protection to depositors in commercial banks and savings banks, and to customers of companies engaging in securities trading pursuant to law, in the event of difficulties of a given company in meeting its obligations to its customers according to the provisions of the Act. Commercial banks, savings banks, companies providing investment services, and other parties engaging in securities trading pursuant to law and established in Iceland, shall be members of the Fund. The same applies to

any branches of such parties within the European Economic Area. Such Member Companies shall not be liable for any commitments entered into by the Fund beyond their statutory contributions to it.

### **The Emergency Law (#)**

The Emergency Law was passed by the Icelandic Parliament on 6 October 2008 in response to special circumstances on the financial market. The law gave Icelandic authorities widespread powers to intervene in the activities of banks and financial institutions. The law also stated that depositors' claims, whether foreign or domestic, shall enjoy a priority status in a winding-up process of a financial institution. This gave the UK and Dutch claims for Icesave deposits the priority in the winding up of Landsbanki.

### **EFTA Court (#)**

The EFTA Court has jurisdiction with regard to EFTA States which are parties to the EEA Agreement. The Court mainly deals with infringement actions brought by the EFTA Surveillance Authority (ESA) against an EFTA State with regard to the implementation, application or interpretation of an EEA rule, for the settlement of disputes between two or more EFTA States, for appeals concerning decisions taken by the EFTA Surveillance Authority and for giving advisory opinions to courts in EFTA States on the interpretation of EEA rules. The jurisdiction of the EFTA Court mainly corresponds to the jurisdiction of the Court of Justice of the European Communities over EC States.

### **Icesave agreements (#)**

The Icelandic Government sought to settle the Icesave issue with the UK and the Netherlands through negotiations. Three times the Icelandic Parliament passed an act authorising the Government to conclude agreements with the governments of the UK and the Netherlands. The first agreement, signed on June 5<sup>th</sup> 2009, entailed that the Depositors' and Investors' Guarantee Fund would take a state guaranteed long term loan from the UK and the Netherlands to cover the minimum amounts guaranteed under the Directive. This agreement was passed by the Icelandic parliament with a number of preconditions on 28 August 2009 which were later rejected by the UK and the Netherlands. A second agreement was signed on 19 October 2009. The agreement stated that the Icelandic Depositors' and Investors' Guarantee Fund would repay over a long term the guaranteed deposits with interest and that Iceland would guarantee any shortfalls. The agreement was passed in Icelandic parliament but referred to a referendum by the President of Iceland. The bill was rejected with 93.2% of valid votes against the bill. A third agreement between Iceland, the UK and the Netherlands was reached on 8 December 2010. The agreement stated that Iceland would guarantee any shortfall on the obligations of the Icelandic Depositors' and Investors' Guarantee Fund regarding Icesave liabilities according to the Directive and would pay the amount back at a lower interest and over a longer term than the previous agreement. The agreement was passed by the Icelandic parliament but referred to a referendum by the President of Iceland. This time the agreement was rejected with 58% of valid votes against the bill. Under the Icelandic constitution, bills passed by the Icelandic parliament have to be signed into law by the President. Upon the refusal to sign a bill the constitution states that the bill is automatically referred to a national referendum within two months. This power had, up to the Icesave issue, only been used once in the history of Iceland.

### **European Free Trade Association (EFTA) (#)**

The European Free Trade Association (EFTA) is an intergovernmental organization set up for the promotion of free trade and economic integration to the benefit of its four Member States: Iceland, Liechtenstein, Norway and Switzerland. EU and EFTA Member States (excluding Switzerland) together form the European Economic Area (EEA).

**European Economic Area (EEA) (#)**

The EEA consists of the Member States of the EU and EFTA (excluding Switzerland) and obliges all of the signatories in principle to adopt all EU legislation related to the single market, except laws on agriculture and fisheries. In practical terms the EEA Agreement extends the EU's internal market to the three EFTA states that are parties to the Agreement. The EFTA states have set up an institutional set-up similar to that of the EU, albeit much smaller in scale, to monitor compliance with the EEA Agreement. ESA and the EFTA Court are a part of this institutional set-up.