



## Questions and Answers

### What is the Icesave dispute about? (#)

As a part of a tumultuous worldwide financial crisis, Landsbanki's depositors at the branches in the Netherlands and the United Kingdom lost access to their deposits on 6 October 2008.

Consequently, **Iceland's Depositors' and Investors' Guarantee Fund ("TIF" or "Fund")** (</tasks/icesave/glossary/#tif>) was obliged, in principle, to pay out the minimum guarantee per depositor in accordance with the rules and time-limits set out in the Icelandic law implementing **Directive 94/19/EC ("the Directive")** (</tasks/icesave/glossary/#directive>). However, no such payments were made to those depositors. In fact, **TIF** (</tasks/icesave/glossary/#tif>) was unable to as its funds were limited.

By its application, the **EFTA Surveillance Authority ("ESA")** (</tasks/icesave/glossary/#esa>) seeks to establish that Iceland has failed to comply with its obligations resulting from the **Directive** (</tasks/icesave/glossary/#directive>) as it failed to ensure payment of the minimum amount of compensation to **Icesave** (</tasks/icesave/glossary/#icesave>) depositors in the Netherlands and in the United Kingdom within the given time-limits. At the heart of the dispute is whether there is an obligation of result upon Iceland to ensure that depositors are compensated as set out in the **Directive** (</tasks/icesave/glossary/#directive>) if all else should fail. The parties also dispute whether, in the event that such an obligation exists, Iceland is excused by virtue of force majeure.

The other matter at dispute is whether by treating depositors with domestic accounts differently from depositors holding accounts at Landsbanki branches in other EEA States, Iceland has infringed Articles 4(1) and 7(1) of the **Directive** (</tasks/icesave/glossary/#directive>) and/or Article 4 EEA. In the event of such an infringement, the parties also dispute whether this difference in treatment must be regarded as objectively justified.

### What was the nature of the economic collapse in Iceland? (#)

The scale and scope of the **economic collapse in Iceland** ([/tasks/icesave/glossary/#financial\\_crash](/tasks/icesave/glossary/#financial_crash)) is unprecedented. In a span of a few days in October 2008 Iceland's three largest banks collapsed. The three banks represented 85% of Iceland's banking sector. In the next six months almost all other financial institutions in the country either collapsed or underwent restructuring. At the same time Iceland's currency depreciated severely in value and Iceland had to implement strict capital controls to prevent an impending total collapse of the currency. Unemployment spiked, house prices collapsed, inflation spiraled, corporate and household insolvencies multiplied and significant political turmoil ensued.

### What is Iceland's defence regarding the alleged Directive obligation? (#)

In essence, Iceland contends that the **Directive** (</tasks/icesave/glossary/#directive>) imposes no obligation of result 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** (</tasks/icesave/glossary/#tif>).

In the alternative, Iceland submits that even if the [Directive](/tasks/icesave/glossary/#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.

#### **What is Iceland's defence regarding the alleged discrimination? (#)**

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

#### **Who are parties to the case before the EFTA Court? (#)**

[ESA](/tasks/icesave/glossary/#esa) and Iceland are the primary parties. The European Commission has intervened in support of [ESA](/tasks/icesave/glossary/#esa). There are no other parties to the case.

#### **Why is the Icesave issue before the EFTA Court? (#)**

[ESA](/tasks/icesave/glossary/#esa) brought the case before the [EFTA Court](/tasks/icesave/glossary/#efta_court). In accordance with the [EEA](/tasks/icesave/glossary/#eea) Agreement, its implementation is monitored by [ESA](/tasks/icesave/glossary/#esa). [ESA](/tasks/icesave/glossary/#esa) has the right to bring infringement actions before the [EFTA Court](/tasks/icesave/glossary/#efta_court). [ESA's](/tasks/icesave/glossary/#esa) role is thus similar to that of the European Commission with respect to the EU.

#### **What is ESA seeking? (#)**

[ESA](/tasks/icesave/glossary/#esa) is seeking a declaration that Iceland breached [EEA](/tasks/icesave/glossary/#eea) law by failing to ensure payment of the EUR 20 000 minimum amount of compensation to [Icesave](/tasks/icesave/glossary/#icesave) depositors in the Netherlands and the UK within the time limits laid down in the Directive.

#### **Are the UK and the Netherlands parties to the dispute? (#)**

No. They are not parties. They have, however, lodged written observations to the [EFTA Court](/tasks/icesave/glossary/#efta_court) concerning the case. Norway and Lichtenstein have also lodged such observations.

#### **Have the UK and the Netherlands made formal claims on Iceland? (#)**

No. The UK and the Netherlands have not made any such claims. The proper venue for the proceeding of such claims is the Reykjavík District Court.

#### **How was TIF funded compared to other deposit guarantee schemes in Europe? (#)**

[TIF](/tasks/icesave/glossary/#tif) was not able to pay the amount of insured deposits in the [Icesave](/tasks/icesave/glossary/#icesave) accounts. The insured amounts were equal to 30 times the existing funds of [TIF](/tasks/icesave/glossary/#tif) at the time. Nonetheless the [TIF](/tasks/icesave/glossary/#tif) was set up and funded entirely in accordance with EU regulations

and norms. No deposit guarantee fund in Europe could have withstood a system-wide banking crisis of the magnitude that Iceland faced in **October 2008**

([/tasks/icesave/glossary/#financial\\_crash](/tasks/icesave/glossary/#financial_crash)). A **recent study by the University of Iceland** (</media/icesave-2011-12/Relative-size-of-the-Icesave-claims-and-financial-strength-of-the-deposit-guarantee-schemes-in-the-EU-and-Iceland.pdf>) has shown, that in the event of such as crisis, the costs for European states to provide funding in a time of crisis to deposit guarantee schemes would average 83% of gross domestic product (GDP). In the time of a systematic financial crisis, this would be beyond the abilities and remit of almost all governments.

#### **Why were Icesave depositors not treated the same as Icelandic depositors? (#)**

In **October 2008** ([/tasks/icesave/glossary/#financial\\_crash](/tasks/icesave/glossary/#financial_crash)) there was an emergency in Iceland as 85% of the banking sector had collapsed with its three major banks subject to a run. To respond, Iceland set up new banks to assume the collapsed banks' obligations with respect to systemic deposits at Icelandic branches, implemented capital controls, etc. This allowed Iceland to avert a large scale catastrophe and prevent a full scale run on the Icelandic branches of the collapsed banks.

The situation was different for the **Icesave** (</tasks/icesave/glossary/#icesave>) deposits in the UK and the Netherlands branches. The run on them was already under way and the Icelandic Authorities had no resources to stop or even slow the run on deposits. As a result, Iceland did not engage in a bank restructuring of the UK and the Netherlands branches like it did with respect to the Icelandic branches.

#### **Have Icesave depositors received any payments on their deposits? (#)**

Yes. The **Icesave** (</tasks/icesave/glossary/#icesave>) depositors in the UK have received full repayments and the Netherlands depositors have received compensation of EUR 100 000 or well in excess of the EUR 20 000.

Certain Landsbanki wholesale depositors in the UK, such as certain charities, endowments and local governments, did not receive any such payments as they were not covered by the UK deposit guarantee scheme. However, due to partial payments commenced by the Estate of Landsbanki in December 2011 these depositors have already received payments amounting to approximately 50% of the total claim, well in excess of the EUR 20 000 minimum.

#### **Who paid the Icesave Depositors? (#)**

The Netherlands and the UK made the payments. The Netherlands and UK authorities organised for **Icesave** (</tasks/icesave/glossary/#icesave>) depositors to file claims with the deposit-guarantee scheme in the Netherlands and the United Kingdom. The UK Government arranged for the pay-out of all retail depositors in full, while the Netherlands Government arranged for the compensation of all depositors to a maximum of EUR 100 000.

#### **Why did the UK and the Netherlands organise the pay-out and compensation of the Icesave Depositors? (#)**

These authorities have stated that they wanted to avoid a potential instability and even a run on bank deposits in their own markets.

#### **Will the UK and the Netherlands recover their funds? (#)**

Yes. They are expected to recover their funds in full from the Landsbanki estate, due to **Icelandic measures taken in 2008** ([/tasks/icesave/glossary/#the\\_emergency\\_law](/tasks/icesave/glossary/#the_emergency_law)).

As part of the **emergency measures** ([/tasks/icesave/glossary/#the\\_emergency\\_1](/tasks/icesave/glossary/#the_emergency_1)) enacted to deal with the Icelandic bank collapse in 2008 bank deposits were granted priority ranking in the banks' winding up proceedings. The priority applies to most deposits, including the **Icesave** (</tasks/icesave/glossary/#icesave>) deposits. Furthermore, the priority is not subject to a limitation and covers all deposits in full, even in excess of the EUR 20 000 minimum under the **Directive** (</tasks/icesave/glossary/#directive>).

The UK and the Netherlands have, as a consequence, priority claims on the Landsbanki estate for all the funds used for the benefit of Icesave depositors. Such priority claims are expected to be repaid in full out of the estate.

#### **When will the UK and the Netherlands receive their recovery from the Landsbanki estate? (#)**

The UK and the Netherlands have already received approximately 50% of their total claim of ISK 1 100 billion (including "top-up" claims and amounts in excess of the insured deposits). It is expected that the estate of the failed bank will have paid out priority claims in full in the next few years.

#### **How much have the UK and the Netherlands already recovered from the Landsbanki estate? (#)**

They have received approximately 50% of their total claim of ISK 1 100 billion (including "top-up" claims and amounts in excess of the insured deposits). The part of the claim which corresponds to the EUR 20 000 covered by the Directive equals ISK 650 billion.

#### **What about the deposits of charities, endowments and local governments? (#)**

Their deposits also enjoy priority standing in the Landsbanki winding up. As a consequence, they have by now received distributions from Landsbanki covering approximately 50% of their deposits and stand to receive full repayment in due course.

Deposits made by these depositors typically far exceeded the EUR 20 000 minimum covered by the **Directive** (</tasks/icesave/glossary/#directive>). These depositors have therefore already received payments well in excess of the EUR 20 000 minimum.

#### **What are the Icesave Agreements? (#)**

The Icelandic Government sought to settle Iceland's bi-lateral relations with the UK and the Netherlands by negotiating with their governments.

Three times the Icelandic Parliament passed an act authorizing the Government to **conclude agreements** ([/tasks/icesave/glossary/#icesave\\_agreements](/tasks/icesave/glossary/#icesave_agreements)) with UK and the Netherlands. The first act was subject to conditions which were later rejected by the UK and the Netherlands. The Icelandic President referred the second two to referendum. The first one was rejected by an overwhelming majority of 92% and the second one was rejected by a majority of 60%. This means that no agreement exists between the three States.

#### **When will the EFTA Court come to a conclusion on the issue? (#)**

The public sitting for the delivery of the judgment of the **EFTA Court** ([/tasks/icesave/glossary/#efta\\_court](/tasks/icesave/glossary/#efta_court)) will be held on Monday, 28 January 2013. Payments will continue from the Landsbanki estate regardless of the finding of the **EFTA Court** ([/tasks/icesave/glossary/#efta\\_court](/tasks/icesave/glossary/#efta_court)).

#### **What is the EEA Agreement? (#)**

In all practical terms the **EEA** (</tasks/icesave/glossary/#eea>) Agreement extends the EU's internal market to the three **EFTA** (</tasks/icesave/glossary/#efta>) states that are parties to the Agreement.

The **EFTA** (</tasks/icesave/glossary/#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** (</tasks/icesave/glossary/#eea>) Agreement. **ESA** (</tasks/icesave/glossary/#esa>) and the **EFTA Court** ([/tasks/icesave/glossary/#efta\\_court](/tasks/icesave/glossary/#efta_court)) are a part of this institutional set-up.