



## THE ICESAVE ISSUE

Iceland will honour its international obligations. The Icelandic parliament has three times stated its intention to repay the UK and the Netherlands the minimum deposit guarantees paid out to Icesave retail depositors. Ordinary Icelanders have protested the severe economic burden falling on them for the failure of a commercial bank operating overseas, and many view the terms of the repayment as unfair and threatening to Iceland's overall economic recovery. The Icesave Act, adopted on 30 December 2009, was rejected in a referendum on 6 March 2010. The government will continue to engage with the UK and the Netherlands to resolve the Icesave issue.

- Icesave was an online retail bank operating in the UK and Netherlands as a branch of Landsbanki, a privately owned Icelandic bank. The bank offered high interest rates to depositors and operated under EU/EEA financial regulations. As a branch of the Icelandic Landsbanki, Icesave was subject to surveillance by the Icelandic Financial Supervisory Authority (FME).
- Following the collapse of all 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.
- As part of wide-ranging measures to address the global financial crisis, the UK and Dutch authorities announced that bank deposits would be guaranteed. Subsequently, the UK authorities paid out Icesave retail depositors in full, while Dutch authorities paid up to €100,000 for Icesave retail depositors.
- Following the collapse of Landsbanki, it became clear that the Icelandic Deposit Guarantee Fund, established under EU legislation to cover losses in the event of a bank failure, was not in a position to cover more than a fraction of the losses incurred by Icesave depositors. Neither the Icelandic scheme nor European regulations were meant to cover the collapse of an entire banking system.
- Talks therefore started on the practical aspects of the payout by the UK and the Dutch authorities of the deposit guarantees and whether the Icelandic government was liable to cover the minimum deposit guarantees (€20,887 per depositor).
- With the constructive support of the French EU Presidency, Iceland, the UK, the Netherlands and several EU Member States reached a common understanding on 14 November 2008.
- The so called Agreed Guidelines recalled that the EU Deposit Guarantee Directive had been incorporated into the EEA legislation in accordance with the EEA Agreement, and was therefore applicable in Iceland in the same way as it was applicable in the EU Member States. The Guidelines allowed for the expeditious finalization of multilateral financial assistance for Iceland, including from the IMF.
- The Guidelines also stated that the unprecedented difficult situation of Iceland and the necessity to find arrangements that allowed Iceland to restore its financial system and its economy should be taken into account when resolving the Icesave issue. The EU and the EEA institutions would continue to be involved and consulted on this process.
- On this basis, formal negotiations between Iceland, the UK and the Netherlands started in February and were concluded in June 2009. Under the Agreements reached on 5 June 2009, the Icelandic Deposit Guarantee Fund would take a state-guaranteed loan from the UK and the Netherlands to repay £2.35 bn and €1.33 bn respectively; the total amount covered by the minimum deposit guarantee.
- According to estimates, most of the liability will be cleared by Landsbanki assets but the exact level will remain uncertain for a number of years. Any shortfall in covering the minimum deposit guarantees, as well as accrued interest, would be covered by the Icelandic government through a state guarantee. To this end, the Icelandic government presented a bill to the Icelandic parliament in the summer of 2009 to provide a legal basis for such a state guarantee.
- The terms of the state guarantee were the subject of heated debate in parliament. Even though the loan is spread over 15 years with a 7 year grace period, the 5.55% interest rate was criticized and many argued that the terms would severely threaten Iceland's economic recovery and put too heavy an economic burden on future generations.
- After one of the longest parliamentary debates in the history of the Icelandic parliament, the Icesave Act

- was adopted in August 2009 with a number of preconditions which aimed at securing Iceland's debt sustainability and allowing Iceland to restore its economy and financial system.
- The preconditions of the parliament were then introduced to the governments of the UK and the Netherlands, as required by the Act. After extensive explanations the governments of the UK and the Netherlands indicated that they would be willing to accept the preconditions of the parliament to the Icelandic state guarantee through Acceptance and Amendment Agreements, providing for the necessary adjustments to the June Agreements.
  - The Acceptance and Amendment Agreements were signed on 19 October 2009. This required certain amendments to the Act passed in August. Therefore, a new proposal was presented to the parliament. Again, an extensive debate took place, specifically on whether the proposed amendments reflected the preconditions made by the parliament in a satisfactory manner. On 30 December 2009, the parliament narrowly passed the revised Icesave act as law.
  - On 5 January 2010, the President of Iceland decided not to sign the new law. According to the Icelandic Constitution, the act nevertheless entered into force. A decision on whether the revised act should remain in force should be made by the public in a national referendum.
  - One of the main reasons cited by the President for his decision was an internet petition against the Icesave act signed by up to 25% of the electorate. The President also referred to the need to ensure a national consensus in addressing the Icesave issue.
  - Public disapproval to the Icesave issue relates to a number of factors. There is widespread frustration over the claim on ordinary citizens in Iceland to pay the price for the irresponsible behaviour of reckless bankers. Repeated delays in the approval of the IMF loans and the implementation of the IMF economic recovery programme in 2009 were perceived as stemming from pressure from the UK and the Netherlands by the general public in Iceland.
  - Last but not least, there is deep discontent in Iceland due to the disproportionate, aggressive and highly damaging actions by the UK government in the financial crisis of October 2008, most specifically when it invoked anti-terrorism legislation against Landsbanki and the Icelandic government in order to freeze assets (The Anti-Terrorism, Crime and Security Act 2001).
  - The government has been in close contact with the governments of the UK and the Netherlands, with Nordic and other partner countries, and with the EU and the IMF, to explain Iceland's position.
  - On February 15 2010 a negotiation committee representing the Icelandic government, met with representatives of the UK and Dutch governments. At this meeting the committee presented a proposal for a new solution to the Icesave dispute, based on an agreement between government and opposition parties in Iceland.
  - Subsequently, representatives of the three Governments were in close contact and held meetings in London for the latter part of February and the beginning of March. Constructive proposals were made by both sides during these talks, but some differences still remain.
  - This round of Icesave talks was postponed because of the 6 March national referendum in Iceland on the validity of the state guarantee. Voter turnout in the referendum was 62.7% and 93.2% of those who voted said no to the Icesave Act of 30 December 2009. Iceland, the UK and the Netherlands have all expressed firm willingness to resume the talks as early as possible.
  - On 26 May the EFTA Surveillance Authority (ESA) issued a Letter of Formal Notice on Iceland's application of the EU Deposit Guarantee Directive. ESA came to the conclusion that by failing to ensure payment of the minimum amount of compensation to Icesave depositors in the UK and the Netherlands Iceland has failed to comply with the obligations resulting from the Directive (and the principle of non-discrimination) . Iceland has now 2 months to respond to the letter before ESA proceeds to consider whether to deliver a reasoned opinion in the case.
  - This is the appropriate forum and process for deciding whether the *acquis* has been violated. Despite this process having been initiated by ESA, Iceland remains committed to resolve the Icesave dispute in bilateral negotiations with the UK and the Netherlands. They do not address whether Iceland has fulfilled its EEA obligations. However, ESA has stated that the case will be withdrawn if an agreement is reached in the Icesave issue.

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*Iceland, with a population of around 317,000, is a constitutional republic with a parliamentary government. Founded in 1944, Iceland joined the United Nations in 1946, became a founding member of the OECD in 1948, of NATO in 1949 and joined EFTA in 1970. With Iceland's accession to the European Economic Area in 1994, Iceland gained access to EU's internal market. The foundations of the Icelandic economy, with a GDP of \$11.4 billion (IMF 2009 est.) are fisheries, industry, tourism, pharmaceuticals and services.*