

Case No: 60971  
Event No: 399325  
Dec. No.: 342/06/COL

**EFTA SURVEILLANCE AUTHORITY DECISION**  
OF 14 NOVEMBER 2006  
ON THE PROLONGATION OF THE SUPPORT SCHEMES TO  
AUDIOVISUAL PRODUCTION, FILM RELATED ACTIVITIES AND FILM  
PRODUCTION COMPANIES  
(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY<sup>1</sup>,

HAVING REGARD TO the Agreement on the European Economic Area<sup>2</sup>, in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice<sup>3</sup>, in particular to Article 24 thereof,

HAVING REGARD TO Article 1(3) in Part I and Article 4(3) in Part II of Protocol 3 to the Surveillance and Court Agreement,

HAVING REGARD TO the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement<sup>4</sup>,

HAVING REGARD TO the Authority's Decision of 14 July 2004<sup>5</sup> on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Surveillance and Court Agreement, in particular Article 4 thereof,

HAVING REGARD TO the Authority's Decisions of 20 February 2002<sup>6</sup>, of 18 September 2002,<sup>7</sup> of 29 October 2003<sup>8</sup> and of 15 July 2005<sup>9</sup>,

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<sup>1</sup> Hereinafter referred to as the 'Authority'.

<sup>2</sup> Hereinafter referred to as the 'EEA Agreement'.

<sup>3</sup> Hereinafter referred to as the 'Surveillance and Court Agreement'.

<sup>4</sup> Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231, EEA Supplements 03.09.94 No 32. The Guidelines were last amended on 25 October 2006. Hereinafter referred to as the State Aid Guidelines. The State Aid Guidelines are accessible on: <http://www.eftasurv.int/fieldsofwork/fieldstateaid/guidelines/>

<sup>5</sup> Decision No 195/04/COL, hereinafter 'the Authority's Decision 195/04/COL'.

<sup>6</sup> Decision No 32/02/COL. The Decision can be found on the Authority's website <http://www.eftasurv.int/fieldsofwork/fieldstateaid/stateaidregistry/>.

<sup>7</sup> Decision No 169/02/COL. The Decision can be found on the Authority's website <http://www.eftasurv.int/fieldsofwork/fieldstateaid/stateaidregistry/>.

<sup>8</sup> Decision No 186/03/COL. The Decision can be found on the Authority's website <http://www.eftasurv.int/fieldsofwork/fieldstateaid/stateaidregistry/>.

WHEREAS:

## I FACTS

### 1 Procedure

By letter dated 19 October 2006 from the Norwegian Ministry of Government Administration and Reform, forwarding a letter from the Ministry of Culture and Church Affairs dated 18 October 2006, both received and registered by the Authority on 19 October 2006 (Event No 394235), the Norwegian authorities notified, according to Article 4(2) of the Authority's Decision No 195/04/COL, the proposed prolongation of the support schemes to audiovisual production, film related activities and film production companies.

### 2 Description of the aid measure

#### 2.1 Scheme relating to support to audiovisual production

The support scheme to audiovisual production, which is laid down in the Regulation on support for audiovisual production (*Forskrift om tilskudd til audiovisuelle produksjoner*), covers different film support mechanisms, consisting of production support for feature films, support for Norwegian part in international co-productions, production support based on market potential, production support for short films and the support of box office returns.

The Authority has adopted three decisions, Decision No 32/02/COL, Decision No 186/03/COL and Decision No 179/05/COL, not to raise objections to the aid granted under the Regulation on support for audiovisual production as notified by the Norwegian government.

The authorized support started on 8 February 2002 and was planned to be applied until February 2007.

The Norwegian government has now notified a proposed prolongation of this scheme until 7 August 2008.

#### 2.2 Scheme relating to public support for film production companies

The Authority has also adopted a decision, Decision No 169/02/COL, not to raise objections to the support for film production companies covered by the Regulation on support for film production companies (*Forskrift om tilskudd til produksjonsselskaper*) as notified by the Norwegian government, for a period of five years. The scheme pursues two main objectives: (1) to contribute towards the production companies' project development and (2) to develop the companies' access to financing.

The support scheme was planned to be applied until September 2007.

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<sup>9</sup>Decision No 179/05/COL. The Decision can be found on the Authority's website <http://www.eftasurv.int/fieldsOfWork/fieldStateAid/stateAidRegistry/>.

The Norwegian government has notified a proposed prolongation of this scheme until 7 August 2008.

## II APPRECIATION

### 1 Procedural requirements

Pursuant to Article 1 (3) in Part I of Protocol 3 to the Surveillance and Court Agreement, *“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”*.

Article 4 (2) of the Authority’s Decision No 195/04/COL provides that a prolongation of an existing authorized aid scheme by up to six years, with or without an increase in the budget, may be notified by way of a simplified notification form.

The Norwegian government has notified a prolongation of the current schemes until 7 August 2008. This corresponds to a prolongation of one and a half year for the Scheme relating to support to audiovisual production, and of eleven months for the Scheme relating to public support for film production companies.

Norway has met its reporting obligations under Article 5, 6 and 7 of the Authority’s Decision No 195/04/COL and the simplified notification procedure can therefore be used according to Article 4(3) of the Authority’s Decision No 195/04/COL.

By submitting simplified notifications for the prolongation of the support schemes to audiovisual production, film related activities and film production companies by letter dated 18 October 2006, the Norwegian authorities have complied with the notification requirement pursuant to Article 4 of the Authority’s Decision No 195/04/COL on simplified notification.

### 2 Assessment

The EEA Agreement does not contain a “cultural exemption” similar to Article 87 (3)(d) EC. However, the Authority has in its previous decisions considered that film support measures may be approved on cultural grounds on the basis of Article 61(3)(c) of the EEA Agreement. The Authority has applied the criteria similar to those applied by the EC Commission on the basis of Article 87(3)(d) of the EC Treaty and taken an approach corresponding to the one laid down in the so-called “*Cinema Communication*” and Commission practice.<sup>10</sup>

The requested extension of the duration of the schemes is the only change to the approved measures. All other aspects of the schemes remain unchanged, except an increase from

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<sup>10</sup> Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works (COM(2001)534 final of 26.09.2001, OJ C 43 of 16.2.2002); prolonged by Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the follow-up of the Commission communication on certain legal aspects relating to cinematographic and other audiovisual works of 26.09.2001 (COM(2004)171 final of 16.3.2004, OJ C 123 of 30 April 2004).

212.9 million NOK in 2005 to 240.1 million NOK in 2006 (an increase of approximately 12.8 %) in the budget that will not have any significant influence on the schemes.

The prolongation of the support schemes does not therefore alter the assessment made by the Authority in its prior decisions approving the schemes. A prolongation, based on the reasoning provided for in the Authority's Decisions Nos 32/02/COL, 169/02/COL, 186/03/COL and 179/05/COL, can therefore be granted.

### 3 Reservation

The notified schemes are proposed prolonged until 7 August 2008. The Commission's Communication on State aid concerning cinematographic and other audiovisual works under the EC Treaty expires on 30 June 2007. If the Commission should take a different view on the compatibility criteria after that date, the Authority might adjust its approach under the EEA Agreement accordingly. The Norwegian authorities are reminded of the Authority's right to provide for appropriate measures, concerning any changes deemed necessary during the duration of the schemes

#### **HAS ADOPTED THIS DECISION:**

1. The EFTA Surveillance Authority has decided not to raise objections to the prolongation of the support schemes to audiovisual production, film related activities and film production companies provided for by the Norwegian authorities.
2. The Norwegian authorities are requested to submit simplified annual reports regarding the implementation of the aid in accordance with Chapter 32 of the State Aid Guidelines.
3. This Decision is addressed to Norwegian authorities.
4. Only the English version is authentic.

Done at Brussels, 14 November 2006,

For the EFTA Surveillance Authority

Kristján Andri Stefánsson  
Acting President

Kurt Jaeger  
College Member