

Case No: 66730
Event No: 521086
Dec. No: 289/09/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 1 July 2009

on the prolongation of the support schemes to audiovisual productions, film related activities and film production companies

(Norway)

THE EFTA SURVEILLANCE AUTHORITY¹

Having regard to the Agreement on the European Economic Area², 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 Justice³, in particular to Article 24 thereof,

Having regard to Article 1(3) of Part I and Article 4(3) of Part II of Protocol 3 to the Surveillance and Court Agreement⁴,

Having regard to the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement⁵, and in particular the Chapter on state aid to cinematographic and other audiovisual works thereof,

Having regard to the Authority's Decision of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3⁶,

¹ Hereinafter referred to as the Authority.

² Hereinafter referred to as the EEA Agreement.

³ Hereinafter referred to as the Surveillance and Court Agreement.

⁴ Hereinafter referred to as Protocol 3.

⁵ 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 Authority on 19 January 1994, published in the Official Journal of the European Union (hereinafter referred to as OJ) L 231 of 03.09.1994 p. 1 and EEA Supplement No 32 of 03.09.1994 p. 1. Hereinafter referred to as the State Aid Guidelines. The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/fieldsOfWork/fieldStateAid/guidelines/>

Having regard to Decision No 32/02/COL of 20 February 2002, Decision No 169/02/COL of 18 September 2002, Decision No 186/03 of 29 October 2003, Decision No 179/05/COL of 15 July 2005, Decision No 342/06/COL of 14 November 2006, Decision No 430/08/COL of 2 July 2008 and Decision No 774/098/COL of 10 December 2008⁷,

Whereas:

I. FACTS

1 Procedure

The Norwegian authorities notified the prolongation of support schemes to audiovisual productions, film related activities and film production companies, pursuant to Article 1(3) of Part I of Protocol 3 by letter of 9 June 2009 (Event No 520899).

2 Description of the proposed measures

2.1 Scheme relating to support to audiovisual production and film related activities

The support scheme relating to audiovisual production and film related activities, 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 (i) production support for feature films, (ii) support for the Norwegian participation in international co-productions, (iii) production support based on market potential, (iv) production support for short films and (v) the support in the form 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 and film related activities as notified by the Norwegian Government.

The scheme started on 8 February 2002 and was due to expire at the beginning of February 2007.

By Decision 342/06/COL, the Authority approved the prolongation of the scheme until 7 August 2008.

By Decision 430/08/COL, the Authority approved the prolongation of the scheme until 1 January 2009.

By Decision 774/08/COL, the Authority approved the prolongation of the scheme until 1 July 2009.

⁶ Decision 195/04/COL of 14 July 2004 published in OJ C 139 of 25.05.2006 p. 57 and EEA Supplement No 26 of 25.05.2006 p. 1 as amended by Decision 319/05/COL of 14 December 2005 published in OJ C 286 of 23.11.2006 p. 9 and EEA Supplement No 57 of 23.11.2006 p. 31.

⁷ These Decisions can be found on the Authority's website:
<http://www.eftasurv.int/fieldsofwork/fieldstateaid/stateaidregistry/>.

By letter dated 9 June 2009, the Norwegian Government has now notified a proposed prolongation of this scheme until 31 December 2009.

2.2 Scheme relating to public support for film production companies

The Authority also adopted Decision No 169/02/COL not to raise objections to the support for film production companies provided for in the Regulation on support for film production companies (*Forskrift om tilskudd til produksjonsselskaper*) as notified by the Norwegian Government. The scheme pursues two main objectives: (i) to contribute towards the production companies' project development and (ii) to develop the companies' access to financing.

The support scheme was due to last five years and expire mid-September 2007.

By Decision 342/06/COL, the Authority approved the prolongation of the scheme until 7 August 2008.

By Decision 430/08/COL, the Authority approved the prolongation of the scheme until 1 January 2009.

By Decision 774/08/COL, the Authority approved the prolongation of the scheme until 1 July 2009.

By letter dated 9 June 2009, the Norwegian Government has now notified a proposed prolongation of this scheme until 31 December 2009.

II. ASSESSMENT

1 Procedural requirements

Pursuant to Article 1(3) of Part I of Protocol 3, "*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 Decision No 195/04/COL provides that a prolongation of an existing authorised 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 authorities have notified a prolongation of the current schemes until 31 December 2009. This corresponds to a prolongation of six months. As the authorised support schemes in this case were initially to expire by February 2007 and mid-September 2007 respectively, the intended prolongations until 31 December 2009 both meet the six-year-criterion set forth under Article 4(2) of Decision No 195/04/COL.

Norway has complied with its reporting obligations under Articles 5 and 6 of Decision No 195/04/COL and, pursuant to Article 4(3) of Decision No 195/04/COL, the simplified notification procedure can therefore be used.

By submitting a simplified notification for the prolongation of the support schemes relating to audiovisual production, film related activities and film production companies by letter dated 9 June 2009, the Norwegian authorities have complied with the notification requirement pursuant to Article 4 of Decision No 195/04/COL on simplified notification.

2 Compatibility of the aid

Whereas the EEA Agreement does not contain a cultural exception similar to that provided for in Article 87(3)(d) EC, 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 same criteria as those used by the European Commission on the basis of Article 87(3)(d) EC read in conjunction with the Commission's Communication on certain legal aspects relating to cinematographic and other audiovisual works.⁸ The Communication has now been adopted by the Authority in form of the Chapter of the Authority's State Aid Guidelines on state aid to cinematographic and other audiovisual works.

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.

The prolongation of the schemes relating to support for film production and film related activities and film production companies does not alter the assessment made by the Authority in its previous decisions approving the schemes. A prolongation based on the reasoning provided for in Decisions Nos. 32/02/COL, 169/02/COL, 186/03/COL and 179/05/COL can therefore be granted.

3 Conclusion

On the basis of the foregoing assessment, the Authority considers that the prolongation of support schemes to audiovisual productions, film related activities and film production companies which the Norwegian authorities are planning to implement is compatible with the functioning of the EEA Agreement within the meaning of Article 61 of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided not to raise objections to the prolongation until 31 December 2009 of support schemes to audiovisual productions, film related activities and film production companies.

Article 2

⁸ 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 26.9.2001, OJ 2002 C 43); prolonged by the Commission Communication of 13 June 2007 (OJ C 134, 16.6.2007, p. 5).

The Norwegian authorities are requested to submit simplified annual reports regarding the implementation of the aid in accordance with Articles 5 and 6 of Decision 195/04/COL.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English version is authentic.

Done at Brussels, 1 July 2009

For the EFTA Surveillance Authority,

Per Sanderud
President

Kristján Andri Stefánsson
College Member