

Ministry of Trade, Industry and Fisheries
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Norway

Subject: COVID-19 Compensation scheme for the cancellation or postponement of cultural events

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the COVID-19 Compensation scheme for the cancellation or postponement of cultural events (“the measure”), it considers that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections¹ to the measure, as it is compatible with the functioning of the EEA Agreement pursuant to its Article 61(2)(b). ESA has based its decision on the following considerations.

2 Procedure

- (2) The Norwegian authorities notified the measure on 2 April 2020.² They submitted additional information on 3 April 2020.³

3 Description of the measure

3.1 Background

- (3) Following the speech of the Director General of the WHO on 5 March 2020, urging authorities to take collective action to limit the spread of the COVID-19 virus,⁴ several municipalities in Norway started recommending the cancellation of events open to the public.⁵
- (4) On 10 March 2020, following the global outbreak of the COVID-19 virus, the Norwegian authorities recommended cancelling all events with more than 500 participants. They further recommended that a public health risk assessment should be performed before holding events with more than 100 participants.
- (5) On 12 March 2020, the Norwegian Directorate of Health (“the Health Directorate”) issued a decision based on the Act on Contagious Diseases⁶ that all cultural events nationwide should be cancelled or postponed.⁷
- (6) The decision had wide-ranging effects. The estimated ticket revenue of the cultural sector in 2020 is approximately NOK 5.6 billion.⁸ With all events cancelled

¹ Reference is made to Article 4(3) of the Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

² Document No 1125604.

³ Document No 1125693.

⁴ <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---5-march-2020>.

⁵ For instance, Stavanger municipality decided on 9 March that indoor events could only be held if the maximum number of attendants was 500 or lower.

⁶ *Lov om vern mot smittsomme sykdommer* (LOV-1994-08-05-55), Section 4-1(2).

⁷ Decision of the Norwegian health authorities of 12 March 2020, available [here](#).

or postponed due to the decision of the Health Directorate, the potential average monthly loss of ticket revenue comes to NOK 466 million. The sector consists of approximately 14 500 companies, which employ approximately 60 000 people.

3.2 Objective

- (7) The objective of the measure is to compensate for the losses and additional costs suffered by organisers having had to cancel or postpone cultural events in the period from 5 March to 30 April 2020 as a result of the COVID-19 outbreak.

3.3 Aid granting authority and national legal basis

- (8) The measure will be administered by the Arts Council Norway (*Kulturrådet*).⁹
- (9) The legal basis for the measure is set out in the Regulation on a temporary compensation scheme for organisers in the culture sector for cancellations, closings or postponements of events as a result of the COVID-19 outbreak (“the Regulation”).¹⁰

3.4 Duration

- (10) The duration of the measure is from 14 April until 31 May 2020.

3.5 Budget

- (11) The budget is NOK 300 million (approx. EUR 26.64 million).¹¹

3.6 Beneficiaries

- (12) The beneficiaries are undertakings in the culture sector. To be eligible for aid, the undertakings must fulfil the criteria laid down in the Regulation.
- (13) Beneficiaries must be registered in the Central Coordinating Register for Legal Entities (*Enhetsregisteret*). This is a public register, which collects central data about commercial and public entities. Legal entities in the cultural sector that are registered in the Volunteer Registry (*Frivillighetsregisteret*) are not eligible for aid under this measure.
- (14) Furthermore, the eligible cultural events must have been open to registration for the public (i.e. not closed events) and scheduled to take place in Norway between 5 March and 30 April 2020.
- (15) The start date of 5 March ensures that event organisers may be compensated for the cancellation or postponement of events based on a recommendation or requirement from local and regional authorities issued prior to the nationwide decision made by the Health Directorate on 12 March. Events that were not postponed or cancelled due to such a recommendation are not eligible for aid.
- (16) In addition, only organisers with total losses and/or total additional costs exceeding NOK 25 000 are eligible.

⁸ Calculated based on numbers from the film, cinema, music, visual arts, theatre, dance and opera sectors.

⁹ <https://kulturradet.no/>.

¹⁰ Reference number of the Regulation has not been decided. The Regulation will enter into force following ESA's approval of the measure.

¹¹ Exchange rate: NOK 1 = EUR 0.089, 02.04.2020.

- (17) The measure does not exclude undertakings in difficulty. However, undertakings that are subject to bankruptcy proceedings are excluded from the measure.
- (18) Entities whose total income in 2019 consisted of 60% or more of public aid are not entitled to compensation under the measure.

3.7 Eligible costs

- (19) The measure is limited to compensating for the following:
 - (a) lost ticket revenues caused by the event being cancelled;
 - (b) lost participation fees caused by the event being cancelled;
 - (c) additional costs caused by the event being cancelled or postponed.
- (20) Lost ticket revenues or participation fees that can be compensated are the difference between the budgeted ticket revenues or participation fees of the cancelled event and the actual ticket revenues or participation fees.
- (21) Additional costs that can be compensated are those caused by the event being postponed or cancelled. Such costs may for instance be cancellation fees, fees connected to re-booking plane tickets, or costs of goods or services that cannot be used at the later date to which the event is moved.
- (22) Compensation will be reduced to the extent that losses are offset from other sources, e.g. from insurance or contractual clauses or other relevant rights that may reduce the loss of ticket revenue or participation fees. Even though the scheme only covers a few categories of lost revenue, it is not excluded that the compensation may result in a profit for the organiser. However, in cases where the compensation will result in a larger profit than the organiser had budgeted for, the compensation shall be reduced in accordance with the budget.
- (23) For events cancelled or postponed prior to the nationwide decision made by the Health Directorate on 12 March, the beneficiaries must confirm, and be able to document, that the cancellation or postponement was the direct result of a recommendation by public authorities and that the event in question fell within the parameters of the relevant recommendation or decision. For events cancelled after 12 March 2020, this condition will be automatically fulfilled.

3.8 Compensation procedure

- (24) Compensation is awarded once per beneficiary. Beneficiaries with multiple events must submit a single application.
- (25) The compensation will be calculated based on the information provided by the applicant in accordance with the Regulation. The following must be provided:
 - (a) Confirmation that all conditions in Section 2 of the Regulation are fulfilled.
 - (b) The lost ticket revenue, lost participation fee and/or additional costs that may be compensated, calculated in accordance with the calculation method laid down in the Regulation.
 - (c) Confirmation that the loss or additional costs the applicant is seeking compensation for are not offset by other rights, such as insurance or contract clauses.

- (d) Information on whether the compensation will result in a profit, whether that profit exceeds the budgeted profit for the event, and if so, the exact difference.
 - (e) Confirmation that the applicant's total income in 2019 consisted of less than 60% public aid.
 - (f) Confirmation that the relevant losses and costs are not covered through other state aid schemes or *ad hoc* aid.
 - (g) Confirmation that the event was postponed or cancelled subject to a recommendation or decision by public authorities.
 - (h) Confirmation that bankruptcy proceeding have not been initiated against the organiser.
- (26) The maximum aid intensity is 100%. However, if the total amount of losses and additional costs applied for and fulfilling the conditions of the measure exceed the total budget of the measure, all approved compensation will be reduced proportionally by the same percentage. As the average expected monthly loss of ticket revenue in the cultural sector in 2020 is estimated at NOK 466 million, it is likely that compensation for each beneficiary will be reduced on this basis.

3.9 Control mechanism and recovery

- (27) Upon receipt of an application, Arts Council Norway will assess whether the information requirements for compensation are fulfilled, but will not perform further *ex ante* control of the information provided. However, Arts Council Norway will perform *ex post* control.
- (28) To that end, all necessary documentation to confirm that the beneficiary fulfils the conditions under the measure must be provided upon request from Arts Council Norway. Such documentation shall include the budget for the event, the actual costs and revenues of the event, relevant contracts (including insurance contracts) and verified accounts from previous comparable events.
- (29) The documentation requirements are the same for all applicants. However, beneficiaries who have received compensation exceeding NOK 1 000 000 must be able to provide auditor approval of the calculation of the aid amount. For beneficiaries with aid amounts below this threshold, it is sufficient that the accounts are certified by its CEO or Chairman.
- (30) Arts Council Norway will perform *ex post* control of all aid exceeding EUR 800 000 (approx. NOK 9 million).¹² Arts Council Norway will further perform *ex post* controls of aid below this threshold based on a risk assessment of the beneficiary, and the information provided in the application. Arts Council Norway will base the assessment, *inter alia*, on whether the compensation results in a profit and the size of the aid amount. Larger aid awards are therefore more likely to be subject to control.
- (31) To ensure that there is no overcompensation, Arts Council Norway will assess, *ex post*, whether the actual profit for the cancelled event in question is reasonable. For events held regularly or semi-regularly, this will entail benchmarking against accounted profits from the same event in previous years. If the event has not

¹² Exchange rate: NOK 1 = EUR 0.089, 02.04.2020.

been held before (or the event has changed significantly), a benchmark exercise may be carried out by checking profits from similar events. If the benchmarking exercise reveals a deviation between the benchmark and the actual profit that the beneficiary is left with as a result of the compensation, the difference shall be recovered unless the deviation can be sufficiently substantiated.

- (32) Unjustified or excessive compensation resulting from incomplete or incorrect information supplied by a beneficiary, or an error made by the granting authority, will be recovered.

4 Presence of state aid

- (33) Article 61(1) of the EEA Agreement reads as follows:

“Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”

- (34) The qualification of a measure as aid within the meaning of this provision requires the following cumulative conditions to be met: (i) the measure must be granted by the state or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (35) The compensation envisaged by the measure will be paid from the state budget and is therefore provided through state resources within the meaning of Article 61(1) of the EEA Agreement. As the decision for compensation is taken by Arts Council Norway, the measure is imputable to the State.
- (36) Since the compensation will relieve the beneficiaries from costs they would otherwise have had to bear as a result of their business and will not be granted to all operators in a comparable legal and factual situation, but only to those organising cultural events, the measure is selective and confers an advantage, which may distort or threaten to distort competition. The advantage corresponds to the amount of compensation paid under the measure.
- (37) As organising events is a sector open to competition between undertakings that compete in intra-EEA trade, there is a risk that the aid could distort or threaten to distort competition and affect such trade.
- (38) The measure therefore constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

5 Procedural requirements

- (39) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“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.”

- (40) The Norwegian authorities have submitted a notification of the aid measure and have not let the measure enter into force yet. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

6 Compatibility of the aid measure

6.1 Introduction

- (41) ESA shall declare state aid compatible with the functioning of the EEA Agreement under its Article 61(2)(b), provided that certain compatibility conditions are fulfilled. That provision reads as follows: “The following shall be compatible with the functioning of this Agreement: aid to make good the damage caused by natural disasters or exceptional occurrences”. ESA has no discretion in assessing the compatibility of aid that falls within this category and meets the terms of Article 61(2)(b) of the EEA Agreement.

6.2 COVID-19 as an exceptional occurrence

- (42) Neither the EEA Agreement, nor any EEA relevant legislation contains a precise definition of “exceptional occurrence”.¹³ Article 61(2)(b) is an exception to the general principle, as stated in Article 61(1), which must be interpreted narrowly.¹⁴ For all measures taken under Article 61(2)(b), there must be a direct causal link between the aid granted and the damage resulting from the exceptional occurrence for each beneficiary and aid must be limited to what is necessary to make good the damage.
- (43) The characterisation of an event as being an exceptional occurrence is made by ESA on a case-by-case basis. The event must be: (i) unforeseeable or difficult to foresee,¹⁵ (ii) significant scale/economic impact,¹⁶ and (iii) extraordinary.
- (44) On 9 March 2020, European Commission President von der Leyen made a statement that companies affected by the COVID-19 outbreak would in principle be eligible for state aid under Article 61(2)(b). On 11 March 2020, the COVID-19 outbreak was classified as a pandemic by the World Health Organisation.¹⁷ On 12 March 2020, the Commission adopted a decision concluding that the COVID-19 outbreak qualifies as an exceptional occurrence for the purpose of Article 107(2)(b) of the Treaty on the Functioning of the European Union,¹⁸ as it is an extraordinary, unforeseeable event having a significant economic impact.¹⁹

¹³ See also See Commission Decision in case SA.56685 [C\(2020\) 1698 final](#) (Denmark) *Compensation scheme for cancellation of events related to COVID-19*, paragraph 24.

¹⁴ See Commission Decision in case SA.32523 [C\(2012\) 4218 final](#) (Cyprus) *Compensation scheme for air carriers registered in Cyprus for additional costs linked to the impossibility to overfly the Turkish airspace*, paragraph 50. See also Commission Decision in case SA.56685 [C\(2020\) 1698 final](#) (Denmark) *Compensation scheme for cancellation of events related to COVID-19*, paragraph 24.

¹⁵ Commission Decision in SA.32163 [C\(2011\) 5495 final](#) (Slovenia) *Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010*, paragraph 31.

¹⁶ Commission Decision in SA.33487 [C\(2012\) 2447 final](#) (Hungary) *Agricultural and fisheries aid to compensate for damage due to exceptional occurrence*, paragraph 36.

¹⁷ [WHO Director Generals opening remarks at the media briefing on COVID-19 on 11 March 2020](#).

¹⁸ Which corresponds to Article 61(2)(b) of the EEA Agreement.

¹⁹ Commission Decision in SA.56685 [C\(2020\) 1698 final](#) (Denmark) *Compensation scheme for cancellation of events related to COVID-19*, paragraphs 26–30.

- (45) On this basis, ESA finds that the COVID-19 outbreak is an extraordinary, unforeseeable event of a significant scale and with a major negative impact on the economy.
- (46) Consequently, ESA considers the COVID-19 outbreak as an exceptional occurrence within the meaning of Article 61(2)(b) of the EEA Agreement.

6.3 Causal link between the measure and COVID-19

- (47) Beneficiaries establishing a direct link between the damages suffered and the Health Directorate's decision of 12 March to ban all cultural events shall be entitled to compensation. Compensation related to events cancelled or postponed from 5 March to, and including, 12 of March 2020 will be granted on the condition that the beneficiary confirms, and can document, that the cancellation or postponement was the direct result of a decision or recommendation by public authorities (i.e. that it falls within the parameters of the relevant recommendation or decision).²⁰ This means that cancellations or postponement based on self-assessment will not be compensated.
- (48) Therefore, the direct link between the damage caused by the recommendations or decisions by public authorities in response to the COVID-19 outbreak and the aid is ensured.

6.4 Proportionality

- (49) In order to be compatible under Article 61(2)(b) EEA, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage and should only make good the damage caused by the exceptional occurrence.
- (50) The measure foresees compensation that does not exceed what is necessary to make good the damage. Losses incurred that are fully or partially covered by the beneficiaries' insurance or other means cannot be compensated. For deferred events, only the additional costs are covered, limiting the compensation.
- (51) Even though the measure only compensates a few selected categories of lost revenue it cannot be ruled out altogether that some of the cancellations of an event may, given the compensation received through the measure, result in the beneficiary turning a profit. However, in the unlikely scenario that the compensation will result in a larger profit than the organiser had budgeted for, the compensation will be reduced in accordance with the budget.
- (52) Moreover, as the measure only envisions compensation for a limited amount of damage, i.e. lost ticket revenues, participation fees and additional costs, it excludes other damage the beneficiaries may have additionally suffered as a consequence of the cancellation. For example, many cultural event organisers receive revenue through food or merchandise sales. Those revenues will not be compensated under the measure. Furthermore, if the total losses and additional costs applied for and fulfilling the conditions exceed the total budget of the measure, all approved compensation will be reduced proportionally by the same

²⁰ To illustrate, Stavanger municipality decided on 9 March that indoor events of more than 500 people were prohibited. Organisers applying based on this decision must be able document that the cancelled or postponed event was to be held indoors and that the event had a higher number of maximum attendants than 500.

percentage. These factors taken together make it difficult for aid under the measure to result in overcompensation.

- (53) The documentation requirements and the *ex post* control system serve to further safeguard against overcompensation. All necessary documentation to confirm that the beneficiary fulfils the conditions under the measure must be provided upon request from Arts Council Norway. The documentation must be verified by an auditor if the compensation exceeds NOK 1 000 000, or by the CEO or Chairman of the beneficiary for smaller claims.
- (54) Arts Council Norway will perform *ex post* controls of all aid grants exceeding EUR 800 000 (approx. NOK 9 million).²¹ Aid under this threshold will be subject to *ex post* control based on a risk assessment of the beneficiary and the information provided in the application. Compensation that does not fulfil the conditions in Regulation will be recovered and unjustified or excessive compensation resulting from incomplete or incorrect information supplied by a beneficiary, or an error made by the granting authority, will also be recovered. This system ensures that all potential beneficiaries have the incentive to provide the correct information at the outset.
- (55) The Norwegian authorities thus ensure that the compensation under the measure will not exceed the damage directly suffered by each beneficiary from the cancellation or postponement of an event as a result of a public recommendation or decision, safeguarding against overcompensation.

6.5 Cumulation

- (56) The Norwegian authorities confirm that aid provided under the measure cannot be cumulated with other state aid granted to cover the same costs or losses.

7 Conclusion

- (57) ESA considers that the measure constitutes state aid with the meaning of Article 61(1) of the EEA Agreement. Since no doubts are raised that this aid is compatible with the functioning of the EEA Agreement pursuant to its Article 61(2)(b), ESA has no objections to the implementation of the measure.
- (58) The Norwegian authorities have confirmed that the notification does not contain any business secrets or other information that should not be published.

For the EFTA Surveillance Authority,

Yours faithfully,

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²¹ Exchange rate: NOK 1 = EUR 0.089, 02.04.2020.

*This document has been electronically authenticated by Bente Angell-Hansen,
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