

Case No:75701
Event No:722497
Dec. No: 518/14/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 26 November 2014

on the aid scheme for the support to the development, promotion and distribution of
interactive productions

(Norway)

THE EFTA SURVEILLANCE AUTHORITY (“the Authority”)

Having regard to the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Article 61(1) and 61(3)(c) 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 (“the Surveillance and Court Agreement”), 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 Agreement (“Protocol 3”),

Whereas:

I. FACTS

1 Procedure

By letter of 3 July 2014,¹ the Norwegian authorities notified the aid scheme for the support to the development, promotion and distribution of interactive productions, pursuant to Article 1(3) of Part I of Protocol 3.

By letter dated 5 August 2014,² the Authority requested additional information.

By letter dated 3 September 2014,³ the Norwegian authorities replied to the information request.

¹ Event Nos 713386 to 713390.

² Event No 717192.

³ Event No 720931.

By emails dated 10 October 2014,⁴ 21 October 2014⁵ and 23 October 2014,⁶ the Authority requested additional information and clarifications, to which the Norwegian authorities responded by emails dated 16 October⁷ and 14 November 2014.⁸

The Authority and the Norwegian authorities also agreed to an extension of the deadline provided in Article 4(5) of Protocol 3 until 26 November 2014 by email and letter exchanged on 21 October 2014⁹ and 4 November 2014.¹⁰

2 Description of the proposed measures

The Norwegian authorities have notified a scheme for the support to the development, promotion and distribution of interactive productions (games). The scheme consists of the allocation of grants for an approximate total annual amount of NOK 20 million for a period of six years, starting as of 1 January 2015 until 31 December 2020.

The Norwegian authorities notified a similar aid scheme regarding interactive productions as part of a larger aid scheme for audiovisual productions, together with an aid scheme for the development of educational measures and screenplays, on 14 July 2008. By Decision 180/09/COL of 31 March 2009, the Authority decided not to raise objections against these notified aid schemes, including the aid scheme for interactive productions. These schemes were approved for a period of six years and will thus expire on 31 December 2014.

With respect to the other aid schemes for audiovisual productions as well as the aid scheme for the development of educational measures and screenplays, which were approved by Decision 180/09/COL, the Norwegian authorities consider that these schemes fall within the scope of the General Block Exemption Regulation (“GBER”)¹¹ and are thus exempted from the notification requirement. However, the aid scheme for the development, promotion and distribution of interactive productions does not fall within the scope of the GBER and is not covered by the 2014 Film and Audiovisual Guidelines.¹² The Norwegian authorities have therefore notified the aid scheme for the development, promotion and distribution of interactive productions on 3 July 2014 in order to secure a prolonged approval.

This Decision thus only assesses the compatibility of the aid scheme for the development, promotion and distribution of interactive productions with Article 61(1) and Article 61(3)(c) of the EEA Agreement.

⁴ Event Nos 725829 and 725830.

⁵ Event No 726424.

⁶ Event 726753.

⁷ Event 726430.

⁸ Event Nos 729712, 729713 and 729714.

⁹ Event No 726424.

¹⁰ Event No 728303.

¹¹ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1), incorporated into the EEA Agreement by Joint Committee Decision No 152/2014 of 27 June 2014 (to be published in the OJ and EEA supplement).

¹² Guidelines regarding state aid for films and other audiovisual works, adopted by the Authority on 26 March 2014 by College Decision 134/14/COL, and published on the Authority’s website: <http://www.eftasurv.int/fieldsOfWork/fieldStateAid/guidelines/>. These Guidelines correspond to the Communication from the European Commission on State aid for films and other audiovisual works, OJ C 332, 15.11.2013, p.1-11.

2.1 The objective of the aid scheme

The objective of the scheme for interactive productions is to advance audiovisual productions, *in casu* interactive productions, as a means of cultural expression and contribute towards attaining the government's policy objectives in the audiovisual field.

The grants to be awarded under the scheme shall contribute to the development, promotion and distribution of more alternative interactive productions in the Norwegian language with restricted market potential and budgets, but of high artistic and technical quality, especially products for children and young people. Grants will be targeted at independent audiovisual producers.

The scheme is divided into three potential measures, i.e. (i) measures aimed at supporting the development of interactive productions; (ii) measures aimed at promoting and distributing interactive productions in Norway; and (iii) measures aimed at promoting and distributing interactive productions abroad.

With respect to the support for the development of interactive productions, the scheme does not support the entire production process but only covers the development phase.

With respect to the support for the promotion and distribution of interactive productions, the purpose of the scheme is to reach the widest possible audience in Norway and abroad.

2.2 National legal basis for the aid schemes

The national legal bases for the notified scheme are the:

- Regulation for support to audiovisual productions nr. 1169 of 17 September 2009 (hereinafter "the Regulation for support to audiovisual productions"); and
- Annual State budget (Chapter 0334 regarding film and media).

The scheme is managed by the Norwegian Film Institute ("the NFI") which was set up on 1 April 2008.

2.3 Duration of the aid scheme

The scheme may be applicable from 1 January 2015 until 31 December 2020.

2.4 Budget

The annual budget to be allocated under the scheme will be approximately NOK 20 million.

2.5 Source and form of the aid

The aid is granted from the State budget in the form of direct grants and the amount of aid is calculated on the basis of the budget or the actual accounts of an interactive production. Article 1.12 of the Regulation for support to audiovisual productions provides that, if the actual expenditure is lower than initially budgeted, the exceeding amount will have to be repaid by the grant recipient to the NFI.

2.6 Beneficiaries

According to Article 1.6(a) of the Regulation for support to audiovisual productions, the beneficiaries of the scheme for support to interactive productions are independent audiovisual companies. Independent audiovisual companies are defined as companies with

audiovisual production as their main purpose and activity. The production company shall not be publicly owned or be subject to dominant influence by a broadcasting company¹³ and must be based in the EEA.

2.7 Territorialisation

There is no rule regarding territorialisation whereby a minimum share of the production budget must be spent in Norway.

2.8 Aid intensity and eligibility

2.8.1 *Support for the development of interactive productions*

According to Article 3.4 of the Regulation for support to audiovisual productions, the aid intensity can be up to 75%. The amount of aid granted under this scheme in 2013 was approximately NOK 20 million.

Only interactive productions, computer games or other audiovisual productions requiring the user's activity may be eligible for support. The following projects are however not eligible for support: projects marketing commercial products, Norwegian language versions of foreign existing interactive productions, educational or training products, tools, manuals, reference books, etc. In order to receive support for the development of larger productions, the applicant must be organised as a limited liability company and key personnel will be required to prove considerable prior experience in interactive productions.

The eligible costs for support are development costs.

2.8.2 *Support for promotion and distribution of interactive productions in Norway*

According to Article 4.2 of the Regulation for the support of audiovisual productions, aid intensity is capped by the requirement that support shall not exceed 50% of the approved promotion/distribution budget or shall not exceed NOK 1 million.

The support provided under this scheme in 2013 was approximately NOK 2.4 million.

The eligible costs cover, *inter alia*, promotion and distribution costs such as marketing costs.

2.8.3 *Support for the promotion and distribution of interactive productions abroad*

The scheme allows a maximum aid intensity of 100% of the approved promotion/distribution budget. However, the Norwegian authorities have indicated that support to the promotion and distribution of interactive productions abroad generally covers 50% of the costs accounted for.

The support provided under this scheme in 2013 was approximately NOK 800 000.

Aid is granted for the promotion and distribution of interactive productions in order to reach a large international audience. The aid will ensure the Norwegian presence at festivals, trade fairs, or other important events.

¹³ Dominant influence is present where one broadcasting company has ownership or voting rights of 25% or more in the production company. When there is more than one broadcasting company, the limit is 50%.

Eligible costs cover, *inter alia*, marketing, production of distribution prints, festival participation fees, translation and sub-titling costs. The grants may not cover expenses made for providing material required by law or regulation.

II. ASSESSMENT

1 The presence of state aid within the meaning of Article 61(1) EEA

Article 61(1) of the EEA Agreement reads:

“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.”

It follows from this provision that, for state aid within the meaning of the EEA Agreement to be present, the following conditions must be cumulatively met: (i) the aid must be granted through State resources; (ii) the aid must favour certain undertakings or the production of certain goods, i.e. the measure must confer a selective economic advantage upon the recipient; (iii) the recipient must constitute an undertaking within the meaning of the EEA Agreement; and (iv) the aid must distort or threaten to distort competition and affect trade between the Contracting Parties.

1.1 State resources

According to Article 61(1) of the EEA Agreement, a measure must be granted by the State or through State resources in order to constitute state aid.

The aid measures will be financed by the NFI which will receive state budgetary allocations for the purpose of granting subsidies in relation to the development, promotion and distribution of interactive productions. The Authority therefore considers that the support is granted by the State or through State resources.

1.2 Selective economic advantage

In order to constitute state aid within the meaning of Article 61(1) of the EEA Agreement, the state measure must favour certain undertakings or the production of certain goods, i.e. the measure must confer a selective economic advantage upon the recipient.

The notion of advantage covers not only positive benefits but also interventions which, in various forms, mitigate the charges normally borne by an undertaking's budget.¹⁴ The aid to interactive productions reduces the costs for the development, promotion and distribution of these products on the part of the benefitting undertakings and thus provides these undertakings with a financial benefit they would not have enjoyed in the normal course of business. It thus strengthens the financial position of the eligible production companies and puts them in a more favourable position compared to other companies

¹⁴ Judgment in *De Gezamenlijke Steenkolenmijnen in Limburg v High Authority of the European Coal and Steel Community*, 30/59, EU:C:1961:2, paragraph 19. Judgment in *Adria-Wien Pipeline GmbH and Wietersdorfer & Peggauer Zementwerke GmbH v Finanzlandesdirektion für Kärnten*, C-143/99, EU:C:2001:598, paragraph 38.

developing and/or promoting interactive productions within the EEA. Therefore, the eligible production companies receive a selective economic advantage over other companies developing interactive productions within the EEA.

1.3 Undertaking

In order to constitute state aid within the meaning of Article 61(1) of the EEA Agreement, the measure must confer an advantage upon an undertaking. Undertakings are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed.¹⁵ Economic activities are activities consisting of offering goods or services on a market.¹⁶ It is clear that the eligible production companies under the scheme can be regarded as undertakings as they offer goods and services, *in casu* interactive productions, on the market.

1.4 Distortion of competition and affect on trade between Contracting Parties

The fourth condition in order to constitute state aid within the meaning of Article 61(1) of the EEA Agreement is that the measure must be liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement.

According to settled case-law, it is not necessary to establish that an aid measure has a real effect on trade and that competition is actually distorted but it is sufficient to examine whether the aid measure is liable to affect such trade and distort competition.¹⁷ Moreover, the mere fact that aid strengthens an undertaking's position compared to that of other undertakings competing in intra-EEA trade is enough to conclude that the measure is liable to distort competition and affect trade in the EEA.¹⁸

It is clear that the potential recipients of aid to interactive productions may be involved in intra-EEA trade. Indeed, interactive productions can be produced and distributed in various alternative locations within the EEA. They are subsequently traded between the Contracting Parties to the EEA Agreement and may compete to attract users located all over the EEA. Production and distribution aid may therefore alter the competition for the realisation of interactive productions, and may influence the trading conditions for their commercialisation. Therefore the aid scheme may be considered as affecting intra-EEA trade and distorting competition between undertakings in the EEA.

1.5 Conclusion

On the basis of the above, the Authority has come to the conclusion that the scheme for the development, promotion and distribution of interactive productions constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

¹⁵ Judgment in *Höfner and Elser v Macroton*, C-41/90, EU:C:1991:16, paragraphs 21-23, Judgment in *Pavlov and Others v Stichting Pensioenfonds Medische Specialisten*, C-180/98 to C-184/98, EU:C:2000:428 and Case E-5/07 *Private Barnehagers Landsforbund v EFTA Surveillance Authority* [2008] EFTA Ct. Rep. 62, paragraph 78.

¹⁶ Judgment in *Ministero dell'Economica e delle Finanze v Cassa di Risparmio di Firenze SpA*, C-222/04, EU:C:2006:8, paragraph 108.

¹⁷ See for example Judgment in *Italy v Commission*, C-372/97, EU:C:2004:234, paragraph 44.

¹⁸ Judgment in *Philip Morris Holland BV v Commission*, 730/79, EU:C:1980:209, paragraphs 11-12 and Joined Cases E-5/04, E-6/04, E-7/04 *Fesil ASA and Finnjord Smelteverk AS v EFTA Surveillance Authority* [2005] EFTA Ct. Rep.117, paragraph 94.

2 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*”.

By submitting the notification of the scheme for the development, promotion and distribution of interactive productions by letters dated 3 July 2014¹⁹ and 3 September 2014,²⁰ the Norwegian authorities have complied with the notification requirement. As the scheme will enter into force only after approval by the Authority, the Norwegian authorities have respected the standstill obligation.

The Authority can therefore conclude that the Norwegian authorities have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3 Compatibility of the aid

According to paragraph 22 of the 2014 Film and Audiovisual Guidelines, although games may represent one of the fastest-growing form of mass media in the coming years, not all games necessarily qualify as audiovisual works or cultural products. Since games have other characteristics regarding production, distribution, marketing, and consumption than films, the rules designed for film production cannot apply automatically to games. Therefore, the 2014 Film and Audiovisual Guidelines do not cover aid granted to games and provide that aid measures in support of games will continue to be addressed on a case-by-case basis. However, and as provided in paragraph 22 of the 2014 Film and Audiovisual Guidelines, to the extent that the necessity of an aid scheme targeted at games which serve a cultural or educational purpose can be demonstrated, the Authority will apply the aid intensity criteria of the Guidelines by analogy.

The Norwegian authorities justify the aid scheme for interactive productions as aid to promote culture. Taking into account that the EEA Agreement does not contain a “cultural exemption” similar to Article 107(3)(d) of the Treaty on the Functioning of the European Union (“TFEU”), the Authority will assess, in line with its constant practice, the compatibility of the aid scheme for the development, promotion and distribution of interactive productions on the basis of Article 61(3)(c) of the EEA Agreement.

According to Article 61(3)(c) of the EEA Agreement, “*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest,*” may be considered compatible. In its assessment, the Authority will apply the same criteria as those applied by the European Commission for the purposes of Article 107(3)(d) TFEU.

In order to be compatible with Article 61(3)(c) of the EEA Agreement, the aid must pursue an objective of EEA interest in a necessary and proportionate way. In this context, a balancing test between the positive and negative effects of such an aid measure should be carried out. To this extent, it is appropriate to assess the following issues:

1) Is the aid measure aimed at a well-defined objective of EEA interest (for example: cultural policy.)?

¹⁹ Event Nos 713386 to 713390.

²⁰ Event No 720931.

- 2) Is the aid well designed to deliver the objective of EEA interest that is to say:
- a) is state aid an appropriate policy instrument?
 - b) is there an incentive effect, namely does the aid change the behaviour of undertakings?
 - c) is the aid measure proportional, that is, could the same change in behaviour be obtained with less aid? Regarding the latter criterion, the maximum aid intensities established by the 2014 Film and Audiovisual Guidelines may be applied by analogy.
- 3) Are the distortions of competition and effect on trade limited, so that the overall balance is positive?

As a preliminary point, the Authority also notes that the aid scheme does not contain any territorialisation obligations and does not reserve the aid exclusively to nationals or requires beneficiaries to have the status of national undertakings established under national commercial law (undertakings established in one EEA State and operating in another by means of a permanent branch or agency must be eligible for aid).

Indeed, according to Article 1.6(a) of the Regulation for support to audiovisual productions, the notified scheme is open to any independent audiovisual undertaking established in Norway, an EEA country or Switzerland. The undertakings are, however, required to register with the Norwegian commercial registry either as a Norwegian company or as a branch or agency of a foreign company. The Norwegian authorities have indicated that the reason for such a requirement is the need for the NFI to be able to exercise some control over the use of government funds.²¹

3.1 Promotion of culture as a well-defined objective of EEA interest

To be compatible with Article 61(3)(c) of the EEA Agreement, aid to the audiovisual sector needs to promote culture and the definition of a cultural product is primarily a responsibility of the EEA States. In assessing an audiovisual support scheme, the Authority's task is limited to verifying whether an EEA State has a relevant, effective verification mechanism in place able to avoid manifest error. This would be achieved through the existence of either a cultural selection process or a cultural profile to be fulfilled by all audiovisual works as a condition of the aid.

Article 1.6(c) of the Regulation for support to audiovisual productions includes a number of criteria which an audiovisual production, including an interactive production, has to comply with in order to be eligible for support. In particular, Article 1.6(c) provides that an application for aid must be for a cultural product and that an audiovisual production will be regarded as a cultural product when it complies with at least three of the following criteria:

- a) the screenplay or the literary work is originally written in Norwegian or Sami,
- b) the main theme concerns Norwegian history, culture or society,
- c) the action takes place in Norway, another EEA country or Switzerland,

²¹ This is in line with the practice of the European Commission which has already considered that this type of condition does not violate any of the fundamental provisions of the EU Treaty. See Decision N742/07 – Estonia of 13 February 2008 and Decision N291/07 – The Netherlands Film Fund of 10 July 2007.

- d) the work has a significant contribution from authors or practicing artists living in Norway, another EEA State or Switzerland.

In addition, Article 3.4 of the Regulation for support to audiovisual productions provides that the purpose of the support measure for the development of interactive productions is to give young people access to Norwegian language interactive productions of high artistic and technical quality. It further provides that support may be given to the development of interactive productions for children and young people and not to projects that primarily market commercial products, Norwegian language versions of existing foreign projects, or the like. In addition, support may also not be provided to training products, educational tools, reference books or manuals.

Taking into account that an interactive production needs to comply with at least three of the four above-mentioned criteria as set out in Article 1.6(c) as well as with Article 3.4 of the Regulation for support to audiovisual productions, it can be concluded that support is only granted to interactive productions of a high artistic and technical quality which preserve Norwegian culture, language and identity. Indeed, paragraph 24 of the 2014 Film and Audiovisual Guidelines provides that linguistic diversity is an important element of cultural diversity and that defending and promoting the use of one or several of the languages of an EEA State also serves the promotion of culture.

The Authority therefore considers that the Norwegian authorities apply a selective cultural test ensuring that aid is granted only for the promotion of culture in line with Article 61(3)(c) of the EEA Agreement.

3.2 Aid as an appropriate policy instrument and incentive effect

In order to comply with Article 61(3)(c) of the EEA Agreement, the direct grants to interactive productions must be the appropriate instruments to achieve the cultural objective being pursued and must provide sufficient incentive effect to change the behaviour of the beneficiaries.

As recognised by the Authority in paragraph 4 of the 2014 Film and Audiovisual Guidelines, aid is important to sustain European audiovisual productions in general. In addition, paragraph 14 further provides that, although EEA States use a wide variety of aid mechanisms and conditions, most schemes consist of grants awarded to selected film productions, where the maximum aid is determined as a percentage of the production budget proposed by the aid beneficiary. Although the 2014 Film and Audiovisual Guidelines also provide that EEA States have increasingly started using tax reductions or the like, it is clear that direct grants are very common in the aid support schemes to the audiovisual sector. Therefore, the Authority is of the opinion that the direct grants to the development, promotion and distribution of interactive productions allow public support to be directly channelled to interactive productions with a cultural content and therefore constitute the appropriate means for achieving the cultural objective being pursued.

In addition, according to the Norwegian authorities, video games are an important part of children and young people's lives, who are faced with a large number of imported commercial games in Norway. The market for Norwegian language interactive productions for children and young people is very small and makes it difficult for producers of such interactive productions to find a sufficient level of upfront investment capital.

Moreover, these interactive productions are generally not marketed well in shops when they are released because they compete with commercially strong productions with large

marketing budgets and commercial power. The combination of the high investment required and the limited audience for such productions means that many of these interactive productions would not be made without the direct grants. The direct grants thus enable the promotion, development and distribution of such interactive productions with a cultural content by reducing the producer's production, promotion and distribution costs. Therefore, the Authority takes the view that the aid scheme under assessment has sufficient incentive effect.

3.3 Proportionality of the aid measure

Paragraph 22 of the Film and Audiovisual Guidelines provides that, to the extent that the necessity of an aid scheme targeted at games which serve a cultural or educational purpose can be demonstrated, the Authority will apply the aid intensity criteria of the Guidelines by analogy.

The Authority will therefore assess each of the notified support measures according to the aid intensity criteria provided in paragraph 51(2) of the 2014 Film and Audiovisual Guidelines which provide that the aid intensity must in principle be limited to 50% of the production budget with a view to stimulating normal commercial initiatives.

The following aid intensities are applicable:

| SUPPORT MEASURE | MAXIMUM AID INTENSITY |
|---|-----------------------|
| Support for the development of interactive productions | 75% |
| Support for the promotion and distribution of interactive productions in Norway | 50% |
| Support for the promotion and distribution of interactive productions abroad | 100% |

The principle set by the Guidelines whereby the aid intensity may not exceed 50%

The notified scheme contains one measure which complies with the rule whereby the maximum aid intensity may not exceed 50%, i.e. the measure for support to the promotion and distribution of interactive productions in Norway.

The Authority considers that, as regards this measure, the aid intensity threshold of the 2014 Film and Audiovisual Guidelines is fulfilled and accordingly the proportionality of the measure is demonstrated.

The Norwegian authorities have however notified some measures which allow for an aid intensity exceeding 50%.

The possibility afforded by the 2014 Film and Audiovisual Guidelines to exceed in certain cases the maximum aid intensity of 50%

The Norwegian authorities have indicated that the 50% ceiling would be exceeded in the case of support for the development of interactive productions (75%) and support for the promotion and distribution of interactive productions abroad (100%).

Paragraph 51(2) of the 2014 Film and Audiovisual Guidelines expressly provides that difficult audiovisual works (which each EEA State must define according to national parameters) are excluded from the 50% aid intensity cap. Films whose sole original

version is in an official language of an EEA State with a limited territory, population or language area may be regarded as difficult audiovisual works in this context.

The Norwegian authorities submit that, in principle, any Norwegian audiovisual production must be considered difficult because the Norwegian market consists of an audience of only 5.1 million potential viewers and because Norwegian audiovisual productions have a very low commercial potential outside the home market.

According to Article 2.8 of the Regulation for support to audiovisual productions, a “difficult film” is defined as follows:

“a difficult film is a film with little prospects of commercial success because it has one or more of the following characteristics:

- *contains mainly Norwegian or Sami dialogue;*
- *is a film of a pronounced artistic nature;*
- *uses experimental and/or innovative language;*
- *focuses on Norwegian culture and/or Norwegian history; and*
- *is a film for children or a young audience, based on an original screenplay by (a) Norwegian author(s).”*

The Norwegian authorities have confirmed that the above-mentioned definition applies by analogy to difficult interactive productions.²² The Authority considers that this definition is in line with the European Commission’s practice²³ and that aid intensities exceeding 50% may therefore be granted on the basis of paragraph 51(2) of the 2014 Film and Audiovisual Guidelines, applied by analogy.

Indeed, the aid intensity ceiling of 75% for the support to the development of interactive productions is proportionate because the aid intensity allows a significant reduction in the producer’s development costs and accordingly stimulates these companies to develop Norwegian language interactive productions.

In addition, with regard to the aid intensity ceiling of 100% for promotion and distribution of interactive productions abroad, it should be noted that the penetration of Norwegian audiovisual products abroad is very limited and therefore warrants such a high aid intensity ceiling. The aid measures are meant to ensure that Norwegian interactive productions can be presented at festivals, trade fairs and other cultural events. Moreover, the Norwegian authorities have informed the Authority that the support for the promotion and distribution of interactive productions abroad has in general been limited to 50% of the approved costs accounted for.²⁴ Taking into account the difficulty in promoting and distributing Norwegian language interactive productions abroad as well as the *de facto* 50% limit as described above, the Authority is of the view that the support measures for the promotion and distribution of interactive productions abroad can be regarded as proportionate to their cultural objective.

The Authority therefore considers that the aid intensities exceeding 50% are proportionate to the cultural objective pursued.

²² See email of the Norwegian authorities dated 16 October 2014 (Event No 726430).

²³ See Decision N742/07 Estonia of 13 February 2008, paragraph 32.

²⁴ Event No 720931.

In addition, the Norwegian authorities have indicated that they will ensure that cumulation of the support granted under the notified scheme and aid granted under other schemes will not result in exceeding the authorised thresholds. Indeed, Article 1.8 of the Regulation for support to audiovisual productions provides that *“if a production receives public support from several sources in addition to the support provided by the NFI, the cumulated aid shall not exceed the limits specified for each individual measure. Public support in this section means state aid which falls within Article 61(1) of the EEA Treaty, including support provided by municipalities and counties as well as public investments that are not on market terms. Support from supranational and international bodies is not considered state aid.”*

Article 1.10 of the Regulation for support to audiovisual productions further provides that the producer must notify the NFI of any support awarded prior to the application for production support. The NFI will be responsible for monitoring that cumulation rules are complied with. The applicant is indeed obliged to inform the NFI of all other public support measures and the NFI must calculate the maximum amount of support on the basis of these figures. The sanction in case of violation of the rules regarding duty to provide information, misuse of aid or any other form of irregularity is the withdrawal of the funding commitment, a withholding of the funds or repayment of the paid contributions.

3.4 A limited distortion of competition and effect on trade

Taking into account the limited potential audience of the interactive productions that have been assessed as well as the absence of any territorialisation clauses and the ability of any company in the EEA area to apply for support, the Authority is of the opinion that the aid scheme for the development, promotion and distribution of interactive productions has a limited effect on trade and does not distort competition to an extent which would be contrary to Article 61(3)(c) of the EEA Agreement.

Based on the above, the Authority is of the opinion that the positive effect of the aid scheme in reaching the objective of allowing for the development and promotion of interactive productions with a cultural content outweighs the potential limited effects on trade and competition.

3.5 Transparency obligation

The Norwegian authorities have confirmed that grants awarded according to the notified aid scheme will be published in line with the transparency requirements in paragraph 51(7) of the 2014 Film and Audiovisual guidelines.²⁵

The latter paragraph provides that EFTA States shall ensure the publication of the following information on a comprehensive State aid website, at national or regional level: the full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, or a link to it; the identity of the granting authority(ies); the identity of the individual beneficiaries; the form and amount of aid granted to each beneficiary; the date of granting; the type of undertaking (SME/large company); the region in which the beneficiary is located (at statistical region level 2)²⁶ and the principal

²⁵ Event Nos 729712, 729713 and 729714.

²⁶ The term “Statistical region” is used instead of the acronym “NUTS” in the corresponding Commission Guidelines. NUTS is derived from the title “Nomenclature of Territorial Units for Statistics” according to Regulation (EC) No 1059/2003 of the European parliament and of the Council of 26.5.2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p.1). This regulation has not been incorporated into the EEA Agreement. However, in order to achieve common definitions in an ever-increasing demand for statistical information at a regional level, the

economic sector in which the beneficiary has its activity (at NACE group level).²⁷ The paragraph further provides that such a requirement can be waived with respect to individual aid awards below EUR 500 000 and also states that the information above must be published after the decision to grant the aid has been taken, must be kept for at least 10 years and must be available to the general public without restrictions.²⁸ EFTA States will not be required to publish the abovementioned information before 1 July 2016.²⁹

4 Conclusion

On the basis of the foregoing assessment, the Authority considers that the scheme for the development, promotion and distribution of interactive productions is compatible with the functioning of the EEA Agreement within the meaning of Article 61 of the EEA Agreement.

The Norwegian authorities are reminded about the obligation resulting from Article 21 of Part II of Protocol 3 in conjunction with Article 6 of Decision 195/04/COL to provide annual reports on the implementation of the scheme.

This Decision is based on the above-mentioned commitment provided by the Norwegian authorities that the aid will be awarded in a transparent manner, in line with paragraph paragraph 51(7) of the 2014 Film and Audiovisual guidelines.

The Norwegian authorities are also reminded that all plans to modify this scheme must be notified to the Authority.

Statistical Office of the European Union, Eurostat, and the National Institutes of the candidate countries and EFTA have agreed that statistical regions would be established similar to the NUTS classification.

²⁷ With the exception of business secrets and other confidential information in duly justified cases and subject to the Authority's agreement (See the Authority Guidelines on professional secrecy in state aid decisions (OJ L154, 8.6.2006, p. 27 and EEA Supplement No 29, 8.6.2006, p.1).

²⁸ This information shall be published within 6 months from the date of granting (or, for aid in the form of tax advantage, within 1 year from the date the tax declaration is due). In case of unlawful aid, EFTA States will be required to ensure the publication of this information ex post, at least within 6 months from the date of the Authority decision. The information should be available in a format which allows data to be searched, extracted, and easily published on the internet, for instance in CSV or XML format.

²⁹ Publication of information on aid awards granted before 1 July 2016, and for fiscal aid, publication for aid claimed or granted before 1 July 2016, will not be required.

HAS ADOPTED THIS DECISION:

Article 1

The scheme for the development, promotion and distribution of interactive productions is compatible with the functioning of the EEA Agreement.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English version is authentic.

Done at Brussels, 26 November 2014

For the EFTA Surveillance Authority,

Oda Helen Sletnes
President

Helga Jónsdóttir
College Member