

## EFTA SURVEILLANCE AUTHORITY DECISION

raising no objections to a zero VAT rate for electronic news services

(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,

Protocol 26 to the EEA Agreement,

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,

Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”), in particular to Article 1(3) of Part I and Article 4(3) of Part II,

Whereas:

### I. FACTS

#### 1 Procedure

- (1) The Norwegian authorities notified an aid scheme based on a proposed zero Value Added Tax (“VAT”) rate for electronic news services, pursuant to Article 1(3) of Part I of Protocol 3 by letter received and registered on 2 December 2015.<sup>1</sup>

#### 2 The aid measure

##### 2.1 General overview of the Norwegian VAT system

- (2) VAT was introduced in Norway with effect from 1 January 1970. The tax is levied on the final consumption of goods and services. Its objective is to secure income for the State.
- (3) The VAT provisions are laid down in the Act on Value Added Tax of 19 June 2009 No 58 (the “VAT Act”)<sup>2</sup> and the Regulation concerning Value Added Tax of 15 December 2009

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<sup>1</sup> Document Nos 782709 to 782711.

No 1540 (the “VAT Regulation”).<sup>3</sup> VAT rates are adopted annually by the Norwegian parliament. Exemptions and zero rates are laid down in the VAT Act and are not adopted annually. However, since exemptions and zero rates have economic effects, their adoption and repeal form part of the annual budget process.

- (4) The general VAT rate is 25% of the net price (taxable base). The VAT rate on foodstuff is 15%. Certain services are subject to a reduced rate of 8%, e.g. passenger transport, admission fees to cinemas and museums or hotel accommodation. Certain supplies, including health care and social services, are exempted from VAT. Exemption means that on the supply of the exempted goods/services no output VAT is charged, and suppliers are not entitled to deduct input VAT.
- (5) Some goods and services, however, are levied output VAT, but the rate is zero. Suppliers of such goods and services are entitled to credit for input VAT. There are currently only a few domestic supply situations which are subject to zero VAT rating. Most of them have existed since the introduction of VAT in Norway (1970), including the zero rating on newspapers. The only zero VAT ratings that have been introduced into the Norwegian VAT legislation after the entry into force of the EEA Agreement are the zero ratings related to electric vehicles and batteries for electric vehicles, which were approved by the Authority in 2015.<sup>4</sup>
- (6) When reporting VAT to the authorities, the input VAT will be set off against the output VAT for the same period. If the input VAT exceeds the output VAT, repayment can be claimed from the tax authorities. Suppliers of goods and services that are zero-rated are also entitled to credit for input VAT and therefore receive a de facto subsidy through the VAT system.

## 2.2 Media policy in Norway

- (7) Norwegian media policy is grounded in the so-called “infrastructure requirement” of the Norwegian Constitution that it is incumbent upon the State to create conditions that facilitate an open and enlightened public discourse.<sup>5</sup>
- (8) The main goal of Norwegian media policy for editorial media is therefore to support news production and a broad and enlightened public discourse in order to promote freedom of expression and democracy. This is to be achieved by stimulating an innovative and competitive media industry and a diversity of news and current affairs media characterised by high quality and independent journalism, including a strong public service broadcaster.
- (9) In October 2009, the Norwegian Ministry of Culture appointed the Media Grant Committee, which was given the mandate to review the use of financial support instruments for the media. The Committee recommended adapting the existing support instruments, including the VAT system, to the emerging digital media landscape. The Committee’s proposals included a change in VAT rates for digital media in order to eliminate negative incentives to innovation and development of digital services.
- (10) The proposed zero VAT rate for electronic news services will apply to all electronic news and current affairs content, independently of distribution technology. Platform expansion

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<sup>2</sup> An English version of the VAT Act is available at:

<http://www.skatteetaten.no/upload/taxnorway/MVAL.eng.oversettelse.juni2011.pdf>.

<sup>3</sup> The VAT Regulation is available at:

<https://lovdata.no/dokument/SF/forskrift/2009-12-15-1540?q=merverdiavgiftsforskriften>.

<sup>4</sup> Decision 150/15/COL of 21 April 2015 on the State aid measures in favour of electric vehicles.

<sup>5</sup> Section 100 of the Norwegian Constitution.

and convergence in the media sector has resulted in media companies expanding their services to new digital platforms. Newspapers are increasingly using audio-visual content to reach their audience, while TV stations have established text-based online news services. Hence, the convergence and media platform expansion have led to a situation where news media are publishing content on a multitude of platforms.

- (11) Furthermore, as newspaper circulations have fallen and the digitisation of the news media services has increased, a larger share of news consumption falls outside of the scope of the existing zero VAT rate for printed newspapers. The Norwegian authorities argue that this development has the following negative effects:
- Reduced demand and use of news services with negative effects on public debate and democracy;
  - Distortion of competition between different distribution platforms; and
  - Obstacles for development of digital news media services.
- (12) These effects are especially challenging as the publishers of news and current affairs media are trying to establish new business models in order to finance the production of high quality journalism on digital platforms.

### 2.3 Existing aid schemes in the field of news and current affairs media

- (13) The following aid schemes are currently in place in the field of news and current affairs media:

Name of grant scheme	Value (in million NOK, 2015)
Production grant for news and current affairs media	308
Production grant for Sami newspapers	25
Production grant for weekly and monthly niche publications	14.6
Distribution aid for newspapers in Finnmark	2
Project grant for local broadcasting	13.5

- (15) Furthermore, according to the VAT Act, section 6-1, newspapers are zero-rated. The zero rating applies only to news on paper (newsprint), i.e. electronic news are not entitled to a zero rating. The zero rating applies only to the consumption of newspapers, and not to the newspaper's supply of advertisement or other services. The zero rating applies to both Norwegian and foreign newspapers provided they are supplied in Norway and that the general conditions are met. For 2014, the loss of revenue from the zero VAT rate on newspapers is estimated at NOK 1.5 billion.
- (16) Moreover, for 2015, the licence fee for the public service broadcaster NRK is NOK 2.552 per household. Revenue from the fee is estimated at approximately NOK 5.2 billion in 2015. The licence fee is levied at reduced VAT rate (8%).

### 3 The zero VAT rate for electronic news services scheme

- (17) The proposed zero VAT rate would apply to any user payment for electronic news services.

#### 3.1 Eligibility criteria for zero VAT rate

- (18) According to the proposed amendment to the VAT Regulation, section 6-21, “electronic news services” are defined as services that (i) mainly include news and current affairs content from different areas of society; (ii) have the general public as target audience; (iii) have an editor in chief; and (iv) are published at least once a week.

##### 3.1.1 News and current affairs content from different areas of society

- (19) The first condition concerns the medium’s content and is the principal condition for zero rating. It means that in order to be eligible for VAT zero rating, the medium must mainly contain news and current affairs content from different areas of society.
- (20) The reasoning behind this condition is that the broad and general news and current affairs media perform a particular democratic function in promoting an open and enlightened public debate. By informing citizens about current events and political questions, these media stimulate public opinion-forming and political debate, which in turn provides individuals with a basis for independent and active participation in public affairs and democratic processes like elections. The criterion is therefore directly linked to the stated purpose of Norwegian media policy, which is to promote freedom of expression and democracy. The most relevant characteristic separating these media from other media or services is the broad and general coverage of news and current events from different areas of society.
- (21) The main question is therefore whether the medium has a news coverage that is sufficiently broad and general to keep readers informed about a broad range of events and current political issues in society. The dividing line between media providing a broad, general coverage of news and other types of media is an existing characteristic of Norwegian media policy and there is a large body of administrative and judicial practice regarding this distinction. Even though digital content can be more integrated with other services and types of content than printed papers, this distinction is not new.
- (22) According to the administrative practice concerning print newspapers, the publication must provide relevant news, i.e. information of general public interest, such as politics, economics and cultural matters. Therefore, publications which predominantly provide information about only a specific sector or interest – for instance culture, religion or sport – are not considered newspapers according to the VAT Act, section 6-1. The same principle applies to media that primarily contain material aimed at a specific professional, political, ideological, religious or ethnic background.
- (23) Almost any type of material about current events and developments can be defined as “news” when presented in an editorial context in a general news medium, including content about for instance the environment, art, astronomy, agriculture, chemistry and medicine. This is content which may constitute a natural and integral part of almost any broad and general news medium. However, if a medium includes only one or a few of these types of content, it cannot keep readers informed about a broad range of events and political issues, and it will therefore not be a general news medium eligible for zero rated VAT.

- (24) A trade press publication will normally concentrate the coverage on one particular trade, sector or business, and weekly popular press publications will typically be focused on entertainment and celebrity content. Trade press, popular press and other kinds of periodicals (on any distribution platform) may make contributions to opinion-forming and debate within their particular fields, but in general such media will lack the broad range of content which may directly promote the informed democratic participation of the general public.
- (25) For news broadcasting through television or radio, the proposed zero VAT rate will apply only to channels that mainly broadcast a broad range of news. TV 2 Nyhetskanalen, BBC World, CNN and Al Jazeera will probably fulfil this condition. Channels providing either only one type of programs (other than news), such as sport or entertainment, or channels providing a wide spectrum of programs, for instance entertainment, drama, movies, game shows, sports etc., will not be eligible. Therefore, TV 2 Hovedkanalen and TVNorge for instance will probably not be entitled to VAT zero rating.
- (26) Certain other services – for instance access to wine societies, music streaming and films – may be supplied in connection with electronic news services. The question is whether such mixed or bundled services are entitled to VAT zero rating or not. As a starting point, each service must be assessed separately. If the service is charged separately, it will as a main rule not be entitled to VAT zero rating. Such services do not form an integral part of the news service, but must be regarded as individual supplies, which have to be treated according to the main rules in the VAT Act. For services not charged separately, the starting point is again that they are considered separate services. However, if the news service is the main element and the other service is of minor importance (ancillary) to the buyer, the service may be considered a part of the VAT zero rated news service.

### *3.1.2 General public as target audience*

- (27) According to this condition, the medium must have the general public as its target audience, which implies that the VAT zero rating will not include media that are primarily aimed at members or employees of specific organisations, associations, companies, etc. This condition further ensures that the medium is a broad and general news service.

### *3.1.3 Editor-in-chief*

- (28) The medium must have an editor-in-chief. Blogs or non-editorial services like content aggregators, search engines and social media do in general not have an editor-in-chief. These services consequently will not benefit from zero VAT rating.
- (29) An editor must protect the free and independent role of the medium, as well as freedom of expression, press freedom and the principle of access to public documents. As a rule, the editor will be personally responsible for the content of the publication and for providing ethical guidelines and procedures for the journalists. The editor is also responsible for ensuring that the published material differentiates clearly between information, facts and editorial opinion – and between independent editorial content and marketing.
- (30) This condition therefore ensures editorial and journalistic quality and trustworthiness of the media and consequently promotes the democratic function of news and current affairs media.

### 3.1.4 *Published at least once a week*

- (31) The medium must be published at least once a week. The rationale for this condition is that with fewer publications, the medium cannot inform the public about current events and on-going public debate.
- (32) The application of this condition is clear for printed editions. For media published or updated continuously – for instance in the case of online services – the interpretation of the condition is less straightforward. According to the Media Authority's Regulation on the determination of circulation and editions in news and current affairs media,<sup>6</sup> section 4, a new digital edition must have at least 50% new and internally produced editorial content. This regulation concerns the production grant for news and current affairs media, but also gives guidance relevant to the interpretation of the proposed amendments to the VAT Regulation.
- (33) As regards broadcasting, the Norwegian authorities state that television news channels do not rely so heavily on re-runs that the condition will not be met. There is therefore no need for detailed rules in this regard.

### 3.2 **Self-assessment of eligibility**

- (34) The Norwegian VAT system is based on the principles of self-assessment and self-declaration. This means that the tax subject must assess whether the transaction is taxable or not, including whether it is exempted or zero rated. The tax subject has to calculate and pay the tax to the tax authorities on his or her own account. The tax authorities offer guidance in interpreting the VAT Act and the VAT Regulation and carry out controls of whether the calculation is correct. Such controls may be executed at random or because of suspicion of incorrect VAT calculations. According to the VAT Act, section 16-1, the tax subject must keep records and provide the tax authorities with all information which may be relevant. The tax authorities may require that the information is proven by written documents.
- (35) If the controls reveal that the tax subject has interpreted the VAT Act and the VAT Regulation incorrectly and that the tax subject for instance is not entitled to VAT zero rating, the tax authorities will stipulate the correct tax to be paid. Such decisions by the local tax office may be appealed to the Directorate of Taxes or the Board of Appeal for VAT. Decisions by the tax authorities may be taken to court.

## 4 **National legal basis**

- (36) The proposed zero VAT rate for electronic news services will be implemented by amending the VAT Act (section 6-2) and the VAT Regulation (section 6-2-1).

## 5 **Budget and duration**

- (37) The zero VAT rate for electronic news services is estimated to reduce State revenues by approximately NOK 350 million annually over the coming years. In the longer term, the annual revenue loss is likely to increase as the sale of digital news is expected to increase substantially in the future.
- (38) The Norwegian authorities have notified the measure for a duration of six years, starting on 1 March 2016.

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<sup>6</sup> Forskrift 17. september 2014 nr. 1207 om fastsettelse av opplag og utgaver i nyhets- og aktualitetsmedier.

## 6 Comments by the Norwegian authorities

- (39) The Norwegian authorities acknowledge that the zero VAT rate for electronic news services constitutes an advantage for the sector supplying news. Consequently, the measure is in principle selective.
- (40) However, a tax advantage is not selective if it falls within the nature of the tax system. The Norwegian authorities argue that reduced rates and the zero VAT rate for certain goods and services form an integral part of the Norwegian VAT system and consequently are not selective. They further argue that reduced rates and zero rating are also in line with Council Directive 2006/112/EC, which establishes a common system of VAT in the European Union (“VAT Directive”).<sup>7</sup> The Norwegian authorities therefore argue that the notified measure does not constitute state aid.
- (41) In the alternative, if the Authority were to consider the notified measure to amount to state aid, the Norwegian authorities argue that the aid should be declared compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c).

## II. ASSESSMENT

### 1 The presence of state aid

- (42) According to Article 61(1) of the EEA Agreement, a measure constitutes state aid if the following cumulative conditions are fulfilled: the measure (i) is granted by the State or through state resources; (ii) confers a selective economic advantage on undertakings; (iii) is liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.

#### 1.1 Presence of state resources

- (43) The aid measure must be granted by the State or through state resources.
- (44) The proposed zero VAT rate for electronic news services will result in the Norwegian authorities foregoing tax revenues that they would otherwise be able to collect. The Authority therefore concludes that the proposed measure involves state resources.

#### 1.2 Favouring certain undertakings or the production of certain goods

- (45) Firstly, the aid measure must confer on its beneficiaries advantages that relieve them of charges that are normally borne from their budget. Secondly, the aid measure must be selective in that it favours “*certain undertakings or the production of certain goods*”.

##### 1.2.1 Conferring an advantage on undertakings

- (46) VAT is a consumption tax. The direct beneficiaries of the proposed zero VAT rate are therefore the consumers of electronic news services. These are mostly private individuals not subject to the state aid rules, which are only applicable to undertakings. Therefore there is no state aid regarding the direct beneficiaries that do not qualify as undertakings.
- (47) The Authority notes that certain undertakings purchase electronic news services, and therefore potentially benefit from a reduction in VAT. However, the Authority notes that

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<sup>7</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347, 11 December 2006, p. 1–118.

any undertaking in Norway that purchases electronic news services will be able to benefit from this effect.

- (48) Moreover, irrespectively of whether the direct beneficiaries of the aid qualify as undertakings, the measures can also stimulate the demand for and increase revenues from electronic news services compared to a reference situation in which no such aid would be granted. It follows that the measures may indirectly favour media companies that sell electronic news services.

### 1.2.2 Selectivity

- (49) To constitute state aid, the aid measure must be selective in that it favours certain undertakings or the production of certain goods. The selectivity criterion thus distinguishes between (selective) state aid measures and general measures of tax or economic policy. Advantages resulting from a general measure applicable without distinction to all economic operators do not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.<sup>8</sup>
- (50) A measure is *prima facie* selective if it forms an exemption from its system of reference, i.e. the system applicable to other undertakings in the same legal or factual situation. Therefore, the first step in the selectivity analysis requires the identification of the system of reference.
- (51) The Authority considers that in the present case the system of reference is the general VAT rule in Norway that the supply of goods and services is subject to VAT at a rate of 25%. The proposed zero VAT rate for electronic news services constitutes an exception to that rule.
- (52) However, the fact that a tax measure constitutes an exception from the reference framework is not sufficient to consider the measure selective, when such a measure is potentially accessible to all undertakings.<sup>9</sup> Similarly, even if benefiting from a tax measure requires the fulfilment of certain conditions, this is not sufficient to make the tax measure selective a priori. In order for a tax measure to constitute aid, it is necessary to identify a particular category of undertakings which can be differentiated from the rest of undertakings based on their specific characteristics.<sup>10</sup> Tax measures which are open to all economic agents do not constitute state aid.<sup>11</sup>
- (53) There are two groups of potential beneficiaries obtaining an advantage in the present case: (i) undertakings purchasing electronic news services (direct beneficiaries) and (ii) media companies selling electronic news services (indirect beneficiaries).
- (54) Regarding the potential direct beneficiaries, the Authority considers that the proposed zero VAT rate for electronic news services will not be selective as it applies to all undertakings established in Norway. Every undertaking can benefit from the measure if it purchases electronic news services. This is an objective condition not subject to any discretion by the

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<sup>8</sup> See Joined Cases E-17/10 and E-6/11 *Liechtenstein v ESA* [2012] EFTA Ct. Rep. 114, paragraph 53 and the case law cited.

<sup>9</sup> Judgments in *Germany v Commission*, C-156/98, EU:C:2000:467, paragraph 22; *Banco Santander and Santusa v Commission*, T-399/11, EU:T:2014:938, paragraph 70 and *Autogrill v Commission*, T-219/10, EU:T:2014:939, paragraph 70, and the case law cited.

<sup>10</sup> Judgment in *Banco Santander and Santusa v Commission*, T-399/11, EU:T:2014:938, paragraph 71, and the case law cited. See also judgment in *Autogrill v Commission*, T-219/10, EU:T:2014:939, paragraph 67

<sup>11</sup> Judgment in *Commission and Spain v Government of Gibraltar and United Kingdom*, C-106/09 P and C-107/09 P, EU:C:2011:732, paragraph 130.



tax administration. All undertakings purchasing electronic news services are eligible for the aid, and all undertakings can purchase these services. Therefore, the zero VAT rate is not selective for the direct beneficiaries and does not entail state aid within the meaning of Article 61(1) of the EEA Agreement.

- (55) Regarding the indirect beneficiaries, the Authority considers that the zero VAT rate is *prima facie* selective, as it will only apply to publishers of electronic news services that fulfil the eligibility criteria set out in section I.3.1 above.
- (56) However, the concept of state aid does not apply to tax measures that differentiate between undertakings and are *prima facie* selective where that differentiation arises from the nature and general scheme of the system of which they form part.<sup>12</sup> In particular, measures introducing a differentiation between undertakings when that differentiation arises from the nature and overall structure of the system of charges of which they form part do not constitute state aid. This justification, based on the nature or overall structure of the tax system, reflects the consistency of a specific tax measure with the internal logic of the tax system in general. It is for the EEA State which has introduced the differentiation to show that it is actually justified by the nature and overall structure of the system in question.<sup>13</sup>
- (57) The Norwegian authorities argue that in general, reduced and zero VAT rates for certain goods and services form an integral part of the Norwegian VAT system and consequently are not selective. Furthermore, they argue that reduced and zero VAT rates are also in line with the VAT Directive.
- (58) The Authority considers, however, that one of the principles of the Norwegian tax system is that the consumption of goods or services should be charged with VAT at a standard rate of 25% in order to generate revenues for the State. Exceptions to this principle may be justified by an objective of common interest, but do not form part of the logic and general nature of the consumption tax system.
- (59) Regarding the VAT Directive, the Authority notes that this directive is not incorporated into the EEA Agreement and therefore does not impose any restrictions on the Norwegian authorities regarding the implementation of reduced and zero VAT rates. However, the fact that Norway may establish a zero VAT rate for electronic news services without breaching internal market rules does not imply that the VAT system can be used in contravention of the state aid rules. Zero VAT rates may still entail state aid and therefore their compatibility with the state aid rules must be assessed.
- (60) Based on the above, the Authority concludes that the proposed measure confers a selective advantage on undertakings selling electronic news services.

### 1.3 Distortion of competition and effect on trade between Contracting Parties

- (61) The aid measure must be liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.
- (62) The proposed measure favours undertakings selling electronic news services by increasing demand for their services. These undertakings are active in the publishing and/or broadcasting sectors, which are open to competition and trade within the EEA.

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<sup>12</sup> Joined Cases E-17/10 and E-6/11 *Liechtenstein v ESA* [2012] EFTA Ct. Rep. 114, paragraph 74; and judgment in *Commission and Spain v Government of Gibraltar and United Kingdom*, C-106/09 P and C-107/09 P, EU:C:2011:732, paragraph 75.

<sup>13</sup> Joined Cases E-17/10 and E-6/11 *Liechtenstein v ESA* [2012] EFTA Ct. Rep. 114, paragraph 75.

Furthermore, these undertakings are active in other markets, for instance for advertisement space, which are also subject to trade and competition. In addition, the proposed zero VAT rate only benefits those undertakings that sell electronic news services fulfilling the eligibility conditions set out in section I.3.1 above. As a result, their competitive position is improved in comparison to other publishers and broadcasters that do not benefit from the measure.

- (63) The mere fact that a measure strengthens the position of an undertaking compared to other undertakings competing in intra-EEA trade is considered sufficient in order to conclude that the measure is liable to affect intra-EEA trade.<sup>14</sup>
- (64) The Authority therefore concludes that the proposed zero VAT rate for electronic news services is liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.

#### 1.4 Conclusion on the presence of state aid

- (65) Based on the above, the Authority concludes that the proposed zero VAT rate for electronic news services constitutes state aid in favour of the indirect beneficiaries, i.e. undertakings selling electronic news services in Norway, within the meaning of Article 61(1) of the EEA Agreement.

## 2 Procedural requirements

- (66) 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*”.
- (67) By submitting a notification of the proposed zero VAT rate for electronic news services, the Norwegian authorities complied with their obligations pursuant to Article 1(3) of Part I of Protocol 3.

## 3 Compatibility of the aid

- (68) The Authority can declare state aid compatible with the functioning of the EEA Agreement under its Article 61(3)(c) provided that certain compatibility conditions are fulfilled.
- (69) For most cases, these conditions are outlined in the Authority’s state aid guidelines. However, there are no existing state aid guidelines applicable to the measure at hand. The Authority will therefore assess the proposed zero VAT rate for electronic news services directly under Article 61(3)(c) of the EEA Agreement, based on the following common assessment principles:
- contribution to a well-defined objective of common interest;
  - need for state intervention;
  - appropriateness of state aid as a policy instrument;
  - existence of an incentive effect;

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<sup>14</sup> Case E-6/98 *Norway v ESA* [1999] EFTA Ct. Rep. 74, paragraph 59; and judgment in *Philip Morris v Commission*, 730/79, EU:C:1980:209, paragraph 11.

- proportionality of the aid amount (aid limited to minimum necessary);
- avoidance of undue negative effects on competition and trade; and
- transparency.

### 3.1 Objective of common interest

- (70) State aid must aim at a well-defined objective of common interest. An objective of common interest is an objective that has been recognised by the Contracting Parties as being in their common interest.
- (71) The Norwegian authorities argue that the purpose of the proposed measure is the promotion of media pluralism and media diversity. The importance of these objectives was confirmed in the Authority's State Aid Guidelines on public service broadcasting, which refer i.a. to the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.<sup>15</sup> The Convention states that each party may adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory. Such measures may include, among others, measures aimed at enhancing diversity of the media.<sup>16</sup>
- (72) Furthermore, the European Union also recognises media pluralism as one of its fundamental values in the Treaty of Lisbon,<sup>17</sup> and its Charter of fundamental rights sets out that the freedom and pluralism of the media shall be respected.<sup>18</sup>
- (73) The Authority concludes from the above that the promotion of media pluralism and media diversity, including the promotion of news and current affairs media consumption, is a well-defined objective of common interest.

### 3.2 Need for state intervention

- (74) In order to assess whether state aid is effective to achieve the identified objective of common interest, it is necessary first to diagnose and define the problem that needs to be addressed. State aid should be targeted towards situations where aid can bring a material improvement that the market alone cannot deliver, for example by remedying a market failure or addressing an equity or cohesion concern.
- (75) The Norwegian authorities explain that there has been a major shift from newspapers to electronic media over the past years, as illustrated by the chart below:

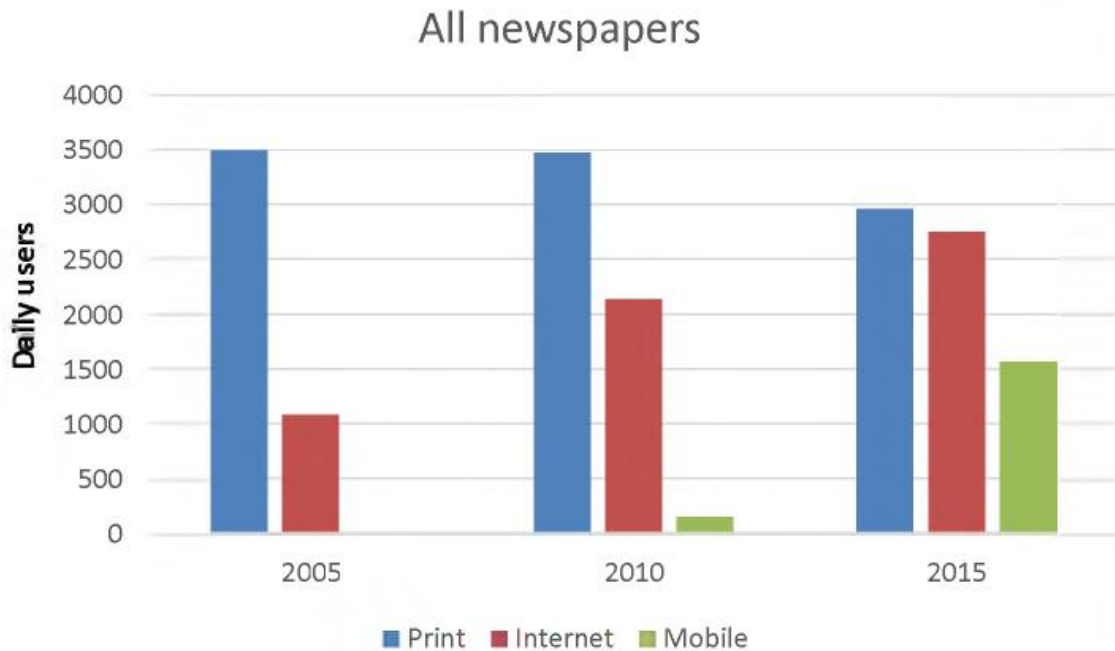
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<sup>15</sup> UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions was signed in Paris on 20 October 2005. It is ratified by Norway and accepted by Iceland. The European Union has also acceded to the convention.

<sup>16</sup> Article 6(1) and 6(2)(h) of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

<sup>17</sup> OJ C 306 of 17 December 2007, p. 1, Article 1(a).

<sup>18</sup> OJ C 364 of 18 December 2000, p. 1, Article 11(2).



Source: Norwegian Media Businesses Association (MBL)

- (76) The Norwegian authorities argue that media companies face new challenges following the rapid digitisation of news media. As a result, the current state aid for news consumption (i.e. the zero VAT rate for printed newspapers) no longer corresponds to the consumption pattern of news and current affairs media in Norway, and therefore cannot ensure that the consumption of news media is adequately supported.
- (77) The Norwegian authorities further explain that the proposed measure addresses an important equity concern. They argue that there are considerable demographic differences in media consumption. While 82% of persons in the age group 67-79 read a print newspaper on an average day in 2014, the share of newspaper readers in the age group 16-24 was only 26%. This difference in media consumption has increased over time. In 2010 the shares were 84% to 48%, and in 2005 89% to 56%. At the same time, online newspapers have become the most important source of news and current affairs for the younger generation. As a result, the existing zero VAT rate for newspapers primarily supports the media consumption of the middle-aged or elderly. The proposed new zero VAT rate for electronic news services will address this issue by supporting news consumption through the publication platforms used by the younger generation.
- (78) In addition, the traditional business models of media companies are based on revenues from subscription sales and advertisements. Even though news in digital form can be distributed at lower costs, media companies face two major problems generating income from digital publication.
- (79) Consumers are used to getting free access to online news services. This is due to the fact that most news media for many years used their online editions mainly as a means to attract advertisers and readers to (paid) print editions. As online services will become the main distribution channels for news content, it will be necessary to establish viable forms of user payment for online services. Reducing the cost for consumers by lowering the VAT rate to zero facilitates the shift from free to paid digital content. This shift has slowly started taking place over the past few years (as can be seen from the chart below) but remains hampered by the higher VAT rate for electronic news services:

	2011	2012	2013	2014
Metered access	1	2	2	1
Liberal (plus-service)	1	6	10	23
Restrictive (hard payment)	3	7	15	31
Paid services total	5	15	27	55
Newspapers with online news services, total	194	190	186	187
All newspapers	228	227	229	230

Source: *Aviser og digital betaling, status 2014*, Sigurd Høst, Høgskulen i Volda (2015)

- (80) Media companies also face new challenges on the advertisement market for digital media. According to the Norwegian authorities, the presence of non-news competitors and global actors like Google and Facebook take an increasing share of total advertisement spending, as well as the development of programmatic advertising, has led to a reduction in digital advertisement revenues. This reduction is particularly problematic as the vast majority of digital revenues stems from advertisement sales (about 92%); circulation revenues (sale of pdf-editions, e-papers, etc.) only account for about 8%.
- (81) According to the Norwegian authorities, digitisation thus changes and disrupts the traditional business models for news production. This creates a risk that revenues may fall below the level necessary to support the production of a diverse range of high quality news and current affairs journalism, which in turn negatively affects media pluralism, public discourse and democracy. The proposed zero VAT rate for electronic news services aims at addressing this market failure by maintaining a high level of production and consumption of high quality news and current affairs.
- (82) Based on the above, the Authority concludes that there is a need for state intervention to achieve the identified objective of common interest.

### 3.3 Appropriateness of state aid as a policy instrument

- (83) State aid must be an appropriate instrument to address the identified objective of common interest. An aid measure is not compatible with the functioning of the EEA Agreement if the same positive contribution to the common objective is achievable through other less distortive policy instruments or other less distortive types of aid instruments.
- (84) The main objective of the proposed zero VAT rate is to support the demand and use of news and current affairs content among consumers, thereby also promoting media pluralism and diversity. This requires instruments aimed at consumers. Reducing the cost of electronic news services is a direct and effective means of ensuring high news consumption and thereby a broad and enlightened public discourse.
- (85) Alternative measures to promote the demand and use of news media might include education and awareness campaigns. For instance, the Norwegian authorities explain that there are projects promoting knowledge about newspapers and newspaper production in primary and secondary schools. Such projects, however, only have a very limited effect on the actual news consumption. They therefore do not present a viable alternative to state aid measures.

- (86) Media undertakings can already receive aid from existing aid schemes for the production of electronic news (see section I.2.3 above). The proposed zero VAT rate, however, differs from these existing schemes. The main objectives of the zero VAT rate is to support the consumption of news and current affairs content among consumers and it will apply equally to all news media. In contrast, the main objective of the existing aid schemes is to maintain diversity in news and current affairs media by supporting certain types of media. For instance, the production grant is directed towards news media in certain difficult market positions, and the aid scheme for Sami newspapers is aimed at ensuring news publication in Sami. Consequently, the existing aid schemes and the proposed zero VAT rate for electronic news services are complementary.
- (87) Based on the above, the Authority concludes that the zero VAT rate for electronic news services is an appropriate instrument to address the identified objective of common interest.

### 3.4 Incentive effect

- (88) State aid is only compatible with the functioning of the EEA Agreement if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour to further the identified objective of common interest, a change in behaviour which it would not undertake without the aid.
- (89) The proposed zero VAT rate for electronic news services is aimed at supporting the consumption of news media by the general public. The general proposition is that the price of news influences the consumption level: lower prices are expected to lead to higher consumption, while increased prices are expected to lower consumption. The proposed zero VAT rate for electronic news services is meant to result in a high demand and use of news services.
- (90) The Norwegian authorities have submitted several studies that concern the effect reduced VAT rates have on the pricing and the demand of certain goods and services.
- (91) In a paper published by the European Commission, Copenhagen Economics<sup>19</sup> states the following: “*It is important from the outset to stress that there is little doubt that permanently lowering the VAT rate on a particular good (or service) sooner or later will lead to a reduction in the price of the good more or less corresponding to the monetary equivalent of the lower VAT rate*”.<sup>20</sup> As further noted by Copenhagen Economics, the impact of the lower VAT rate does, however, depend on the consumer response to lower prices of the particular good (or service) and the level of competition within the sector.
- (92) A large study performed on behalf of the European Commission by Rambøll confirms a significant negative relationship between price and demand of news.<sup>21</sup> Based on a consumer survey with 1 000 responses from each of the 24 Member States included in the study, they find the demand for newspapers, both print and digital, to be affected by the price level. The price elasticity was estimated at -3.7 for printed newspapers and -2.3 for

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<sup>19</sup> Copenhagen Economics (2007) Taxation Papers, Study on reduced VAT applied to goods and services in the Member State of the European Union, Working Paper NO 13 2007, European Commission, available at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/gen\\_info/economic\\_analysis/tax\\_papers/taxation\\_paper\\_13\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_13_en.pdf).

<sup>20</sup> Copenhagen Economics study, page 10.

<sup>21</sup> Rambøll et.al (2013) Economic Study on Publications on all Physical Means of Support and Electronic Publications in the context of VAT, final report, European Commission, available at: [http://ec.europa.eu/taxation\\_customs/resources/documents/common/publications/studies/economic\\_study\\_v\\_at\\_on\\_publications\\_finalreport.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/economic_study_v_at_on_publications_finalreport.pdf).

digital newspapers.<sup>22</sup> However, despite the lower price elasticity for digital newspapers, more than half of the respondents in the study believed that the price of digital products should be at least 50% less than the comparable printed products. This shows that consumers are very price sensitive with regard to digital news services.

- (93) The Norwegian authorities submitted further evidence of the effect of VAT changes on consumer prices. They refer, for instance, to changes in the VAT rates for newspapers in Finland over the last years. In January 2012, the VAT rate on newspapers in Finland increased from 0% to 9% in order to harmonise the VAT rates of newspapers, books and periodicals. This led to a significant leap in the price of newspapers in 2012.<sup>23</sup> Similarly, evidence from the newspaper market in Sweden shows a negative relationship between price and consumption of news. The VAT rate on newspapers increased from 0% to 6% in 1996. According to Gustafsson (2007), this caused an abnormally high reduction in subscription sales due to the following price increase.<sup>24</sup> The price of subscription newspapers increased by 10% to 11% in 1996, twice as much as normal.
- (94) The Authority notes that there is limited evidence from the Rambøll study regarding the effects of lowering VAT rates on prices and consumption in the market for electronic news services. However, the evidence provided on VAT changes regarding other products and services indicates that media companies are likely to pass on a significant part of the VAT reduction to consumers in order to increase demand. The Authority notes that the Norwegian news media sector is characterised by a high number of news media competing for readers (see chart in paragraph (98) below). The Authority therefore considers that it is likely that a zero VAT rate on electronic news services will lead to lower prices for the consumer compared to a situation with a VAT charged at 25%.
- (95) The Authority therefore concludes that the proposed zero VAT rate has an incentive effect for consumers by bolstering their demand for electronic news services.

### 3.5 Proportionality

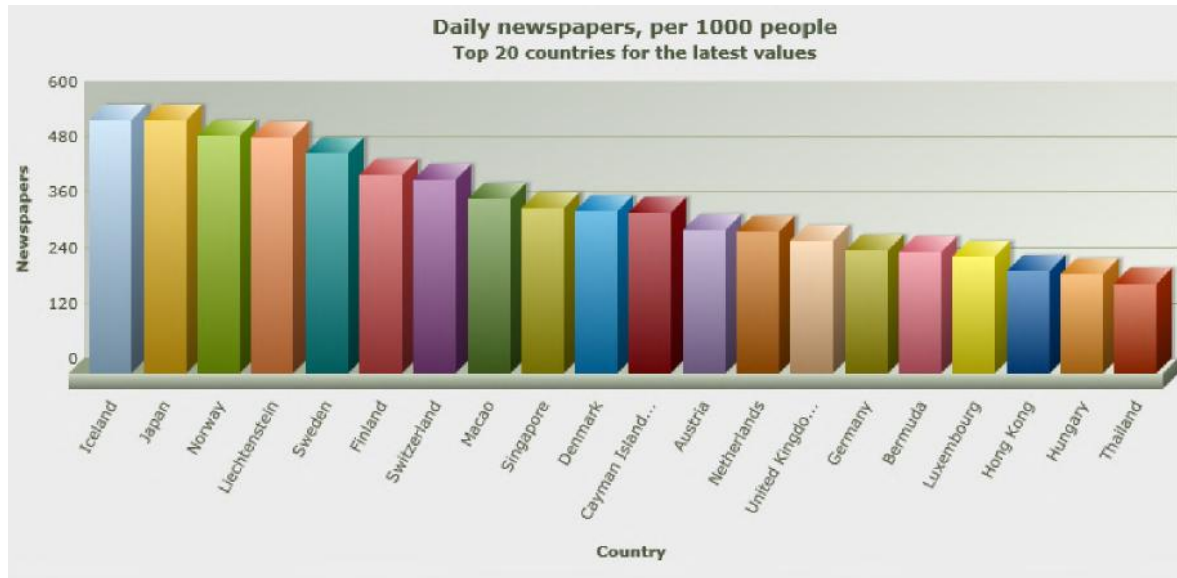
- (96) State aid is proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the identified objective of common interest.
- (97) The Norwegian authorities explain that the proposed zero VAT rate serves to reduce the price of electronic news services for consumers, thereby maintaining a high level of news consumption in the future. News consumption is important for an individual's literacy and general knowledge. Informed citizens make better decisions, not only for themselves but also for their children and in political elections. High consumption of news therefore has a value for the society as a whole.
- (98) Norway pursues an active policy of supporting news media production and encouraging news consumption. As a result, it has some of the highest levels of news media consumption in the world, as can be seen from the following chart regarding the consumption of daily newspapers:

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<sup>22</sup> Rambøll report, page 68.

<sup>23</sup> Rambøll report, Annex A.

<sup>24</sup> Gustafsson (2007) Det svenska presstödet's marknadskonsekvenser - En analys på uppdrag fra Kulturdepartementet.



Source: World Bank

- (99) However, according to the Norwegian authorities, it is neither possible nor desirable to define an upper limit to the level of news consumption, or exactly define which level of news consumption (on the lower end of the scale) would constitute a threat to freedom of expression and democracy. Consequently, it is not possible to assess whether a higher VAT rate than zero would lead to a sufficient change in consumer behaviour. Since the desired result is to maximise the level of news consumption in the future, the aid intensity (a zero VAT rate) is proportionate.
- (100) The proposed zero VAT rate will also provide indirect benefits to media companies through higher demand and increased revenues. The importance of these indirect benefits depends on the pricing decisions for each individual electronic news service and the corresponding consumer reaction. The Authority considers that these effects are difficult to quantify in advance, but will be rather limited given the evidence presented by the Norwegian authorities on the pass-on of VAT changes to consumers (see section II.3.4 above). Furthermore, they represent a necessary consequence of the zero VAT rate and are incidental to achieving the objective pursued by the aid scheme. In any event, the Authority considers that any such indirect benefit will also pursue the identified objective of common interest, i.e. the promotion of media pluralism and media diversity.
- (101) Based on the above, the Authority concludes that the proposed zero VAT rate for electronic news services is proportionate.

### 3.6 Avoidance of undue negative effects on competition and trade

- (102) For state aid to be compatible with the functioning of the EEA Agreement, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Contracting Parties must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest.
- (103) VAT is a consumption tax that only indirectly benefits media companies through a potential increase in demand and revenues. This effect is likely to be limited, given the evidence on the pass-on of lower VAT rates discussed in section II.3.4 above. In any event, these indirect benefits are incidental to any reduction in VAT.
- (104) The proposed zero VAT rate for electronic news services will apply to all eligible general news and current affairs media, irrespective of their distribution channel and the type of



media. The Authority notes in particular that the measure is not limited to Norwegian electronic news services, but that services of all origins are eligible for the zero VAT rate. Accordingly, the effect on competition between undertakings active in the provision of electronic news services in Norway, including in relation to related markets e.g. for advertisement space, is limited.

- (105) The Authority further notes that newspapers are also subject to a zero VAT rate based on an existing aid scheme. The proposed zero VAT rate for electronic news services will remove any difference in VAT treatment between distribution platforms for news and current affairs media. As a result, media companies will be able to compete on an equal footing independently of their choice of distribution channels for their news and current affairs products or services.
- (106) Finally, the Authority considers that the overall effect on trade is also limited. As stated above, the proposed zero VAT rate does not discriminate against foreign news media. Any indirect benefit received by media companies from the measure is incidental to the main purpose of the measure. Furthermore, Norwegian media only have a very limited audience outside Norway, and international news media only have a small customer base in Norway. Any effect on trade, including in relation to related markets e.g. for advertisement space, is therefore likely to be limited.
- (107) The Authority thus concludes that the limited negative effects in terms of distortions of competition and impact on trade between Contracting Parties created by the proposed zero VAT rate for electronic news services are outweighed by the positive effects of the proposed measure in terms of contribution to the objective of common interest.

### 3.7 Transparency

- (108) The Norwegian authorities will comply with the transparency requirements by publishing the full text of the aid scheme and making any necessary disclosures on a central website as from 1 July 2016 at the latest.

## 4 Conclusion

- (109) The Authority finds that the proposed zero VAT rate for electronic news services constitutes state aid with the meaning of Article 61(1) of the EEA Agreement. This aid is compatible with the functioning of the EEA Agreement until 1 March 2022.
- (110) The Norwegian authorities are reminded that all plans to modify this scheme must be notified to the Authority. The Norwegian authorities are also reminded of the obligation resulting from Article 21 of Part II of Protocol 3 in conjunction with Articles 5 and 6 of Decision No 195/04/COL to provide annual reports on the implementation of the scheme.

HAS ADOPTED THIS DECISION:

### *Article 1*

The zero VAT rate for electronic news services constitutes state aid in favour of the indirect beneficiaries, i.e. undertakings selling electronic news services in Norway. This state aid is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c).

*Article 2*

The implementation of the measure is authorised accordingly. The measure can be in force until 1 March 2022.

*Article 3*

This Decision is addressed to the Kingdom of Norway.

*Article 4*

Only the English language version of this decision is authentic.

Done in Brussels.

*For the EFTA Surveillance Authority*

Sven Erik Svedman  
*President*

Helga Jónsdóttir  
*College Member*

*This document has been electronically signed by Sven Erik Svedman, Frank Buechel, Helga Jonsdottir on 25/01/2016*