

## EFTA SURVEILLANCE AUTHORITY DECISION

of 15 June 2016

to raise no objections to amendments to the production grant scheme  
for news and current affairs media

(Norway)

The EFTA Surveillance Authority (“the Authority”),

HAVING REGARD to:

the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Articles 61 and 62,

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 amendments to the production grant scheme for news and current affairs media, pursuant to Article 1(3) of Part I of Protocol 3, by letter of 10 March 2016.<sup>1</sup>
- (2) By letter dated 4 April 2016,<sup>2</sup> the Authority requested information from the Norwegian authorities. By letter dated 18 April 2016,<sup>3</sup> the Norwegian authorities replied to the information request.

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<sup>1</sup> Documents No 796973, 796975-796978.

<sup>2</sup> Document No 799103.

<sup>3</sup> Document No 800944.

## 2 The aid measure

### 2.1 The existing production grant scheme

- (3) The notified measure concerns amendments to the existing production grant scheme for news and current affairs media.
- (4) Under the existing production grant scheme, only two groups of news media are eligible for aid, namely leading and sole media<sup>4</sup> as well as secondary media.<sup>5</sup>
- (5) According to the applicable regulation, there are a number of eligibility criteria that media need to fulfil, in particular the following:<sup>6</sup>
- Their primary objective must be to engage in journalistic production and the distribution of news, current affairs and social debate to the general public. Grants are not awarded to media that have a primary objective of engaging in advertising or marketing. In addition, grants are not awarded to media that are aimed primarily at members or employees of specific organisations, associations or companies.
  - They must contain a broad range of news, current affairs and debate content from different areas of society. Grants are not awarded to media in which a majority of the content consists of advertisements. In addition, grants are not awarded to media that primarily contain material from just one or a few areas of society, or which primarily contain material aimed at a specific professional, political, ideological, religious or ethnic background.
  - They need to have an editor in chief as defined in the provisions of “Redaktørplakaten” (a set of ethical guidelines for editors which also gives the editor in chief full responsibility for the editorial content).
  - They need to receive genuine payment for news, current affairs and debate content, and advertising, according to a publicly available price list. They also need to sell at least half of their approved net circulation through subscription. The product sold in non-subscription sales has to be identical to the product sold through subscription.
  - Media companies that are state-controlled, that cross-subsidise parent or sister companies or that have average profits after taxes of more than NOK 2 million or with an average operating margin of over 10% are excluded from the scheme. Furthermore, any dividends may not exceed the interest rate on the company’s equity, set according to the average effective year rate for government bonds yield for 10 years, with an addition of 2 percentage points to reflect commercial risk. Moreover, dividends per year may not exceed 25% of the production grant received for the previous year, nor a maximum of NOK 1 million.

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<sup>4</sup> The leading medium is defined as a medium that has the largest circulation at the publishing site. A sole medium is defined as a medium without any competition at the publishing site. Leading and sole media are only eligible if their circulation figures are above 1000, but do not exceed 6000 copies per edition. Consequently, this group consists mostly of smaller local news providers.

<sup>5</sup> Secondary media are defined as media that have a competitor with a greater circulation at the publishing site. In cases where the actual media offerings consist of a portfolio of associated services on different distribution platforms, the competitive position is defined based on the principal medium. Secondary media are only eligible if their circulation figures exceed 1000 copies per edition.

<sup>6</sup> Regulation of 25 March 2014 on the production grants for news and current affairs media.

- (6) The existing scheme is managed by the Norwegian Media Authority, supported by a Grant Committee whose members are appointed by the Ministry of Culture for a term of four years. The Grant Committee assists with the assessment of grant applications and otherwise makes comments on matters in relation to the aid scheme. Individual decisions made by the Norwegian Media Authority can be appealed to the Media Appeals Board.
- (7) The Authority authorised the existing production grant scheme by Decision No 112/14/COL of 12 March 2014.<sup>7</sup>

## 2.2 The proposed amendments to the scheme

- (8) The existing production grant scheme does not include weekly newspapers as a separate category of beneficiaries. Instead, weekly newspapers are currently eligible for subsidies under a different aid scheme managed by the Arts Council of Norway. This scheme is based on a number of discretionary award criteria, including an assessment of editorial quality. The Norwegian authorities now intend to end this separate aid scheme and instead include weekly news and current affairs media in the production grant scheme.
- (9) The notified amendments thus concern the introduction of national weekly news and current affairs media as a separate category of recipients within the existing production grant scheme. The notification includes a definition of “national weekly news and current affairs media” and criteria for the allocation of aid.
- (10) National weekly media will be defined as media with an average net circulation of at least 1000, which sell at least 30% of the circulation outside the county of publishing and have a circulation of at least 50 in at least six of the counties of Norway.
- (11) Apart from this, the general criteria laid down in the current regulations on the production grant for news and current affairs media will apply (see paragraph (5) above).
- (12) Under the proposed amendments, national weekly media which are entitled to aid will receive grants that are calculated as follows:
- A base grant with the same amounts for all national weekly media which qualify for grants.
  - A variable grant distributed on the basis of the combined annual circulation for the principal medium and all the associated media products, multiplied by the following grant rates:
- Rate 1: National weekly media that mainly use Norwegian *nynorsk*.
- Rate 2: Other national weekly media.
- (13) These amounts and rates are based on the budget allocation, the financial performance of the various groups of grant recipients and discussions with the media industry’s main organisations.
- (14) Given that the eligibility criteria of the notified amendments differ from those of the existing scheme administered by the Arts Council, some media might lose their entitlement to aid grants. In order to allow these media sufficient time to adapt their

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<sup>7</sup> Decision No 112/14/COL of 12 March 2014 not to raise objections to a production grant scheme for news and current affairs media. OJ L 207, 3.7.2014, p. 44. The full text of the decision is available at <http://www.eftasurv.int/media/decisions/112-14-COL.pdf>

business to these changes, the notified amendments foresee that affected media may benefit from a transitional period of three years during which they will receive a reduced grant. During the first year after the change has taken place, the media will receive a grant corresponding to two-thirds of the grant they received the last year they were entitled to a grant. This will be reduced to one-half and one-third respectively in the following two years.

### 3 National legal basis

- (15) The notified measure will take the form of legislative amendments to the Norwegian Regulation on production grants for news and current affairs media of 25 March 2014.

### 4 Budget and duration

- (16) The budget of the production grant will be increased by NOK 14.8 million (to a total of NOK 323 million) in 2016. The increase corresponds to the amount allocated to weekly newspapers by the Arts Council in 2015.
- (17) By its Decision No 112/14/COL, the Authority authorised the production grant for news and current affairs media for a period of six years, i.e. until 11 March 2020. Given that the notified amendments will form an integral part of the production grant scheme, the same duration will apply.

### 5 Comments by the Norwegian authorities

- (18) The Norwegian authorities consider that the current aid scheme in favour of weekly newspapers is an existing aid scheme originating from before Norway's accession to the EEA Agreement. However, the notified amendments to the production grant scheme entail changes that are so significant as to constitute new aid.
- (19) The Norwegian authorities argue that a separate grant rate for national weekly media edited in Nynorsk is required to attain equity objectives that the market would otherwise fail to deliver.
- (20) Bokmål and Nynorsk are two written forms of the Norwegian language with formally equal status. Official language policy is that both should be fully functional written languages in all areas of society. Nevertheless, Bokmål is much more commonly used than Nynorsk. About 90% of the population primarily use Bokmål in private, and only about 10% use Nynorsk. In key social sectors such as private industry, advertising, technology and in the major national newspapers, Nynorsk is virtually absent.
- (21) Of the 235 newspapers which were published in 2014, only 46 were formally edited in Nynorsk, 20 in both languages and 167 only in Bokmål. Currently, "Dag og Tid" is the only national newspaper which is published exclusively in Nynorsk. All other newspapers edited exclusively in Nynorsk are local newspapers. Having at least one national publication in Nynorsk is considered as vital for the functioning and development of Nynorsk.
- (22) Finally, the Norwegian authorities have confirmed that the transparency obligations required in application of the common assessment principles under Article 61(3)(c) of the EEA Agreement will be fulfilled for the production grant for news and current affairs media scheme as a whole, including the notified amendments.



## II. ASSESSMENT

### 1 The presence of state aid

- (23) Article 61(1) of the EEA Agreement states that a measure constitutes state aid if the following conditions are cumulatively fulfilled: the measure (i) is granted by the State or through state resources; (ii) confers an economic advantage to the beneficiary; (iii) is selective; and (iv) is liable to distort competition and to affect trade between Contracting Parties.
- (24) In its Decision No 112/14/COL, the Authority concluded that the production grant scheme constituted state aid. This finding is based on the following elements: (i) the scheme will be financed from the budget allocation controlled by the Ministry of Culture; (ii) the subsidies relieve the beneficiaries of normal operating costs; (iii) they are only granted to certain undertakings active in the press sector, while other undertakings in Norway do not benefit from the scheme, even if they are otherwise in the same legal and factual situation; and (iv) the aid strengthens the financial position of certain undertakings in the Norwegian press sector, while other undertakings in the same sector do not receive such aid. Furthermore, even though undertakings in the Norwegian press sector mainly focus their activity on the Norwegian market, trade between EEA States does take place in relation to news and current affairs media products.
- (25) The Authority has not received any information indicating that this assessment should be different for the notified amendments. The notified amendments thus constitute state aid within the meaning of Article 61(1) of the EEA Agreement.
- (26) The Authority notes that the current grant scheme for weekly newspapers administered by the Arts Council is likely to constitute existing aid. However, the Authority does not need to conclude on the existing aid character of the current aid scheme, given that the notified amendments result in substantial changes as they alter the eligibility criteria and therefore the group of potential beneficiaries. The Authority further notes that it authorised the existing production grant scheme in its Decision No 112/14/COL. The notified amendments propose to include a new category of beneficiaries in the production grant, resulting in a substantial change to the existing scheme. The notified amendments therefore in any event constitute new aid.
- (27) The Authority concludes that the notified amendments are thus subject to the new aid procedure.

### 2 Procedural requirements

- (28) 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*”.
- (29) By submitting a notification of the amendments to the production scheme for news and current affairs media on 10 March 2016, the Norwegian authorities complied with their obligations pursuant to Article 1(3) of Part I of Protocol 3.

### 3 Compatibility of the aid

- (30) The Authority notes that there are no guidelines that are applicable to assess measures such as the notified amendments. It will therefore assess them 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;
- 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**

- (31) An aid measure has to 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.
- (32) The notified amendments pursue the same objective as the existing production grant scheme, namely to promote media pluralism and media diversity. As the Authority concluded in its Decision No 112/14/COL, the promotion of media pluralism and media diversity is a well-defined objective of common interest.<sup>8</sup>

### **3.2 Need for state intervention**

- (33) 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.
- (34) The notified amendments to the production grant scheme aim at providing special support to national weekly news and current affairs media. The Norwegian authorities argue that this type of media suffer from a specific market failure due to their scattered readership.
- (35) In general, secondary media in any market will receive less advertising income than their circulation and readership alone would imply. This leads to lower income and a weaker economy than its competitors – which in turn will influence the product and eventually further reduce readership and sales. The underlying dynamic in the advertising market thus acts in the direction of less media pluralism than would be the case if advertising revenues corresponded more closely to actual readership or user payment.
- (36) This problem will typically be even greater in secondary media with a very scattered readership. Secondary niche media with scattered readership will generally not be attractive to advertisers, neither directly not as part of advertising co-operations. This difficulty in attracting advertisement revenues is further worsened by the small circulations and the general lack of a thematic base that might enable them to reach niche audiences attractive to advertisers.
- (37) The cumulative effect of these disadvantages is that the potential for advertising revenues is very limited.

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<sup>8</sup> Decision No 112/14/COL, para. 49.



- (38) The table below shows the share of advertisement income (as part of total operating income) the different types of news media eligible for a production grant were able to generate in the past years. For weekly news media, advertisement income amounted to merely 17% of total operating income in 2014. This was below the share for national daily (secondary) media (20%) and well below local weekly media (55%).

Grant categories	Year	2010	2011	2012	2013	2014
<b>National weekly media</b>	Advertising revenues	21 094 759	21 279 781	19 729 698	20 289 203	18 980 443
	Ad.revenues share of operating income	22 %	20 %	17 %	18 %	17 %
	Operating income	98 052 673	108 132 780	114 656 925	110 330 908	112 856 668
	Number of recipients	6	6	6	6	6
	Year	2010	2011	2012	2013	2014
<b>Nationwide daily media</b>	Advertising	69 645 200	73 545 747	76 425 922	75 928 580	70 900 129
	Ad.revenues share of operating income	22 %	23 %	23 %	22 %	20 %
	Operating income	323 170 800	323 363 913	335 978 698	339 381 933	350 070 348
	Number of recipients	5	5	5	5	5
	Year	2010	2011	2012	2013	2014
<b>Local weekly media</b>	Advertising revenues	118 444 435	129 014 162	127 046 534	139 912 675	139 473 795
	Ad.revenues share of operating income	56 %	57 %	56 %	56 %	55 %
	Operating income	211 226 419	227 705 181	227 732 604	250 138 205	253 900 422
	Number of recipients	60	61	60	63	64
	Year	2010	2011	2012	2013	2014
<b>All recipients</b>	Advertising revenues	804 801 622	860 429 297	856 578 981	853 662 080	860 407 879
	Ad.revenues share of operating income	49 %	50 %	50 %	49 %	47 %
	Operating income	1 655 130 125	1 710 343 817	1 726 299 745	1 746 162 907	1 816 766 013
	Number of recipients	138	138	138	140	144

Source: The Norwegian Media Authority

- (39) A very widely scattered readership also implies higher distribution costs. National weekly media must in general rely on normal postal services for a large share of their subscribers. Norway Post operates with three different shipment alternatives: nationwide, regional and local. “Nationwide” implies that the newspapers may be delivered to Norway Post anywhere, and be distributed anywhere in the country. “Regional” implies that delivery to Norway Post must be made at the same regional terminal which distributes the newspapers to the subscribers. And “local” implies that delivery must be made at the distribution unit where the newspaper carriers are based. Of the three alternatives, “nationwide” is the most expensive, and prices have increased considerably over the past years.
- (40) The national weekly newspapers normally use the “nationwide” alternative at Norway Post. In comparison, the local weekly newspapers mainly have local subscribers and can base distribution either on the “local” alternative at Norway Post or private distribution, which normally is even less expensive.<sup>9</sup>
- (41) The Norwegian authorities have further shown that a separate, higher grant rate is required to preserve and incentivise media publications in Nynorsk, given the low rate of utilisation amongst the Norwegian population and the resulting barrier to expanding revenues from both sales and advertisement.
- (42) Based on the above, the Authority considers that the notified amendments are necessary to promote media pluralism and media diversity.

<sup>9</sup> In 2013, the distribution cost per circulation unit (copy) was NOK 5.79 for the national weekly media and NOK 3.82 for local weekly media.



### 3.3 Appropriate instrument

- (43) 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.
- (44) In its Decision No 112/14/COL, the Authority considered that the main market failure faced by the media eligible under the production grant scheme was the lack of profitability. Non-aid instruments were found to be insufficient to address this issue as they could not create a financial basis for a pluralistic media sector in Norway. Furthermore, the Norwegian authorities had considered alternative aid measures, but these were found to be less appropriate than the production grant scheme.<sup>10</sup>
- (45) These considerations are transferable to the notified amendments. They are also aimed at addressing a lack of profitability, which in turn endangers the existence of the national weekly news and current affairs media in question.
- (46) The Authority therefore concludes that the notified amendments represent an appropriate instrument to promote media pluralism and media diversity.

### 3.4 Incentive effect

- (47) 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.
- (48) The Norwegian authorities have submitted information on the financial situation of the potential beneficiaries of the notified amendments. The information provided demonstrates that national weekly news and current affairs media consistently show significant deficits before aid grants. After the aid grants, the losses were turned into modest profits in only two out of the last five years. In the remaining three years, the eligible weekly news and current affairs media showed a collective deficit. It is therefore likely that a significant number of the current recipients would discontinue their operations if the grant were to be removed, as it would no longer be economically viable to continue their operations.
- (49) In the absence of aid, the eligible media would thus most likely have to significantly reduce costs or replace the aid with other sources of income. However, the potential for increased user payment or advertising revenues is limited. Significant cost reductions, on the other hand, would probably lead to a lowering of journalistic standards and a reduction of the amount of published material. This would in turn weaken the media's ability to fulfil their role in society.
- (50) Regarding the transitional rules, the Authority notes that subsidies have played an important role in the financing of the Norwegian media sector in the past, including for national weekly news media. A sudden withdrawal would be likely to result in the closure of the affected media. The Authority also notes that the transitional rules foresee grants that are limited to three years, at rates that are reducing every year. This should provide an incentive for national weekly news and current affairs media that become ineligible under the notified amendments to quickly adapt to their new situation.

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<sup>10</sup> Decision No 112/14/COL, paras 51-52.

- (51) Against this background, the Authority considers that the notified amendments have a sufficient incentive effect to induce the eligible media to maintain their offerings, thereby contributing to the objective of ensuring media plurality and diversity.

### **3.5 Proportionality**

- (52) State aid is proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the identified objective of common interest.
- (53) The Norwegian authorities have explained that the precise effect of the notified amendments for individual recipients cannot be calculated in advance as the grant is allocated based on a yearly stipulation of grant rates and fixed amounts. However, they have shown that under the current aid scheme administered by the Arts Council, recipients receive between NOK 0.7 million and NOK 5 million per year. On average, this amounted to about 11% of operating costs in 2014. Furthermore, in three of the previous five years the grant amounts have not been sufficient to enable the eligible media to collectively realise a net profit. The Authority notes that the budget related to the notified amendments is similar to the one of the current scheme administered by the Arts Council, and that there is no intention to substantially increase the aid amounts.
- (54) Furthermore, the Authority notes that under the general provisions of the production grant scheme set out in paragraph (5) above, media that show an average profits after taxes of more than NOK 2 million or an average operating margin of over 10% are excluded, as there should be no need for any state aid given their profitability. At the same time, the aid amount is capped at 40% of total production cost and to a maximum amount per copy that cannot exceed the media's average subscription price.<sup>11</sup>
- (55) Finally, the production grant scheme contains a number of additional safeguards to ensure that the aid is actually used within the medium to which it is granted. For this purpose, the scheme limits the possibility of media to cross-subsidise other companies within a group, as well as the payment of dividends. The mechanism for limiting dividends, set out in paragraph (5) above, is intended to enable in particular small media to remunerate their capital, whilst at the same time ensuring that the aid is not misused.
- (56) Regarding the transitional rules, the Authority notes that the grants are limited to three years, at rates that are reduced every year. This should ensure that the aid is limited to the amount necessary to assist the affected media in adapting to their new situation.
- (57) On the basis of the above, the Authority concludes that the notified amendments are proportionate.

### **3.6 Effects on trade and competition**

- (58) 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.
- (59) National weekly news and current affairs media are secondary media with nationwide distribution. They therefore operate in the same market as the (daily) nationwide secondary media, which are also in principle entitled to state aid under the production grant scheme. However, the circulation of national weekly news and current affairs media are typically rather limited, and they are unlikely to hold strong market positions. In

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<sup>11</sup> Decision No 112/14/COL, para. 62.

addition, the national weekly news and current affairs media will normally be targeted towards different kinds of audiences, and provide news and current affairs with distinct ideological, social or religious perspectives. As a result, they normally are not regarded as substitutes for other media. Finally, national weekly news and current affairs media will mainly receive relatively limited aid amounts, covering a small share of their operating costs.

- (60) The Authority also notes that the media concerned by the notified amendments are relatively small and only have a very limited potential readership outside Norway. In line with the conclusion reached for daily secondary media in Decision No 112/14/COL, the Authority thus considers that aid grants to these media are unlikely to have any significant effect on trade.<sup>12</sup>
- (61) Regarding the transitional rules, the Authority notes that the existence of direct production grants since 1969 shaped the competitive structure of the news media sector in Norway. The gradual withdrawal of aid from certain national weekly media as foreseen in the notified amendments affords them the opportunity to adapt their business and thus helps preserve media plurality. Against this background, the Authority considers that the transitional rules have only a limited effect on competition and trade.
- (62) Based on the above, the Authority concludes that the distortion of competition and the effect on trade due to the notified amendments are very limited, and in any event outweighed by the positive effect on media pluralism and media diversity.

### **3.7 Transparency**

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

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<sup>12</sup> Decision No 112/14/COL, para. 72.

#### 4 Conclusion

- (64) On the basis of the foregoing assessment, the Authority considers that the proposed amendments to the production grant scheme for news and current affairs media constitute state aid with the meaning of Article 61(1) of the EEA Agreement. This aid is compatible with the functioning of the EEA Agreement.
- (65) The Norwegian authorities are reminded that all plans to modify this scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

##### *Article 1*

The amendments to the production grant scheme for news and current affairs media are compatible with the functioning of the EEA agreement pursuant to Article 61(3)(c) thereof.

##### *Article 2*

The implementation of the measure is authorised accordingly.

##### *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, on 15 June 2016,

*For the EFTA Surveillance Authority*

Sven Erik Svedman  
*President*

Frank Büchel  
*College Member*

Helga Jónsdóttir  
*College Member*

*This document has been electronically signed by Sven Erik Svedman, Frank Buechel, Helga Jonsdottir on 15/06/2016*