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# EFTA SURVEILLANCE AUTHORITY

Doc. No: 02-6431-I  
Ref. No: SAM 030.02.004  
Dec. No: 169/02/COL

EFTA SURVEILLANCE AUTHORITY DECISION  
of 18 September 2002  
regarding public support for film production companies  
(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area<sup>1</sup>, in particular to Articles 61 to 63 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice<sup>2</sup>, in particular Article 24 and Article 1 of Protocol 3 thereof,

HAVING REGARD TO the Procedural and Substantive Rules in the Field of State Aid<sup>3</sup>, in particular Chapter 10 thereof<sup>4</sup>,

WHEREAS:

## I. FACTS

### Procedure

By letter from the Ministry of Culture dated 9 April 2002, transmitted by the Norwegian Mission to the European Union by letter dated 13 May 2002, received and registered by the Authority on 14 May 2002 (Doc. No: 02-3624-A), the Norwegian Government notified the Authority of a new support measure for film production companies.

By letter dated 4 June 2002 (*Doc. No: 02-4184-D*), the Authority requested additional information. The Norwegian Government submitted the requested information by

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<sup>1</sup> Hereinafter referred to as the EEA Agreement.

<sup>2</sup> Hereinafter referred to as the Surveillance and Court Agreement.

<sup>3</sup> Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231, EEA Supplements 03.09.94 No. 32, last amended by the Authority's Decision No. 145/02/COL of 26 July 2002, not yet published; hereinafter referred to as the 'Authority's State Aid Guidelines'.

<sup>4</sup> Aid to small and medium-sized enterprises (SMEs), hereinafter referred to as "SME Guidelines".

letter from the Ministry of Culture dated 26 June 2002, received and registered by the Authority on 3 July 2002 (Doc. No. 02-5078-A).

By letter dated 25 July 2002 (Doc. No. 02-5621-D), the Authority requested the Norwegian Government to submit additional clarifications, which were submitted by letter from the Ministry of Culture dated 15 August 2002, received and registered by the Authority on 21 August 2002 (Doc. No. 02-6094-A).

By letter dated 5 September 2002 (Doc. No. 02-6339-D), the Authority acknowledged receipt of that letter and informed the Norwegian Government that it now considered the notification to be complete.

By fax from the Ministry of Culture dated 10 September 2002, which was sent to the Authority on 12 September 2002, received and registered by the Authority on that same day (Doc. No. 02-6571-A), the Norwegian authorities informed the Authority of an amendment to the draft regulation as regards the eligibility of foreign film production companies.

## **Description of aid measures**

### ***Overview of situation of film production companies in Norway***

According to the Norwegian Government, the Norwegian film market is characterised by weak vertical and horizontal integration. Few companies are in continuous production and the number of production companies in Norway exceeds the number of films being produced annually. There is limited formal co-operation between film producers. The industry is characterised by network co-operation where the players move in and out of more or less established patterns of co-operation with varying forms and types of relations.

The Norwegian Government described the Norwegian market for film production as being limited and explained that Norwegian audiovisual products are rarely distributed widely outside the domestic market. The majority of production companies in Norway have, in the Norwegian Government's view, a low production capacity and difficulties in acquiring capital on the market. These difficulties stem, according to the Norwegian Government, from the insignificant size of the individual enterprises. According to the Norwegian authorities, production companies typically have few employees. The accumulated annual turnover of the companies engaged in continuous feature film production is estimated to be approximately NOK 200-300 million.

According to the Norwegian Government, few production companies have a cash-flow situation that permits a thorough development of a feature film project or a focused search for quality projects. These circumstances lead, in the Norwegian Government's view, to a situation where production companies with a weak financial base may embark on sometimes under-developed projects with a view to receiving public support. Public support for film production provides the production company with stable income for a given period. The result is that a number of underdeveloped projects are put into production, the effect of which may be more expensive production or a less satisfactory product.

### ***Objective of the support for film production companies***

According to the Norwegian Government, the new support scheme is designed to contribute to the development of stable film production companies that have the resources necessary to follow long-term plans. The new scheme will provide the production companies with the opportunity to improve their own skills and continuity and encourage an economy of scale by supporting mergers of smaller units into larger companies.

The new support measures pursue two main objectives: (1) to contribute towards the production companies' project development, both with respect to a focused search for projects and the creative work on individual projects ("project development aid") and (2) to develop the companies' managerial, financial, project-management and marketing skills as well as to improve the film production companies' access to financing. The aim of this aid measure is to increase the companies' cost-efficiency, provide them with a strong financial base, and thus enable the company to improve the earning potential for each film.

### ***Description of proposal for new support measures for production companies***

The notified aid measure is a pilot project with a limited duration of five years from the date the regulation takes effect. Before the end of that period, the scheme will be thoroughly evaluated in order to assess the structural effects of the scheme. The prolongation of the new aid measures will depend on their success.

Legal basis for the new aid measure is a (draft) regulation on support to film production companies ("*Forskrift om tilskudd til produksjonsselskaper*").

According to the Norwegian Government, the new support measure is supposed to become effective in 2002, subject to approval from the Authority.

The management of the public funds directed at film production companies is assigned to the Norwegian Film Fund<sup>5</sup>.

The new support measure will be financed by the funds allocated in the budget to the Norwegian Film Fund. In order to ensure a flexible approach to film production and to answer immediate needs of the industry and the market, the Norwegian Film Fund decides each year on the allocation of the funds to the individual support measures administered by it. The Norwegian Government informed the Authority that according to the Ministry of Culture, the sum allocated to the new support measure would be less than 5% of the overall budgetary allocation to the Norwegian Film Fund.<sup>6</sup>

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<sup>5</sup> The Norwegian Film Fund was established as from 1 July 2001. It is recalled that the Norwegian Film Fund also administers film support measures approved by the Authority in its decision of 20 February 2002 (Dec. No. 32/02/COL).

<sup>6</sup> According to the Norwegian Government, the State Budget for 2002 allowed the Norwegian Film Fund to spend approximately NOK 202 million. Based on estimates given by the Ministry of Culture, the money available for the new support measure in 2002 would be in the area of NOK 10 million.

Eligible for support are film production companies as defined in § 2 of the draft regulation.<sup>7</sup> Film production companies must apply for support on the basis of a business plan. The application will be assessed on an individual basis and monitored closely by professional film consultants as well as business consultants. A limited number of applicants will be invited to a final round in which they will be interviewed and where the conditions for support will be negotiated. The support levels will be determined on the basis of the project's merits and potential for contributing to the fulfilment of the objective behind the support measure. Individual contracts will provide detailed criteria under which support is granted, the conditions under which payment of instalments are made, and deadlines for reports. The draft regulation stresses that no public support shall be granted to cover operating costs of the film production company (cf. § 3 (2) of the draft regulation).

According to § 3 of the draft regulation, the aid may be granted as “*project development aid*” and “*business development aid*”.

#### *Project development aid*

Public support to project development activities takes the form of outright grants.

Aid granted in the form of “project development aid” is limited to 50% of the project's budget. This means that the film production company must provide own capital amounting to at least 50% of the project's budget (cf. § 7 (1) of the draft regulation). The Norwegian Government confirmed that the eligible costs, taken into account when assessing the permissible aid amount, would be determined in accordance with Chapter 10 of the Authority's State Aid Guidelines on SMEs.

According to the Norwegian authorities, project development aid might in theory be cumulated with support for script development for the same project. The Norwegian Government explained, however, that the script development scheme is directed at individual scriptwriters, whereas the production support schemes are directed at film production companies.

Grants for project development under the notified new support measure will be taken into account when determining the level of State support for film production. Any aid received by the film production company in the form of aid to project development would be taken into account when determining the permissible aid under the *feature film production support mechanism* as well as the support in the form of *50/50 grants*. Support for project development will therefore be subject to the aid ceilings fixed under these support mechanisms.

#### *Business development aid*

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<sup>7</sup> A production company is defined as an undertaking, which

1. has audiovisual production as its main objective and
2. is either a company registered in the (Norwegian) register of business enterprises as a production company or a (non-EEA) foreign company with a registered branch (in Norway), provided that the head of the branch is a Norwegian citizen or is domiciled in Norway.

Companies that fulfil the requirement under the first indent and that are registered in another country that is a Party to the EEA Agreement shall be regarded as a Norwegian production company for the purpose of this regulation.

Public support for business development takes the form of an interest-free loan. The “business development loan” will be repayable according to individual criteria fixed in the contract outlining the terms under which public support is granted (cf. § 10 of the draft regulation). These loans have a maximum duration of five years (§ 3 (3) of the draft regulation).

“Business development loans” may only be granted to small and medium sized production companies (SMEs) (cf. § 4 (2) of the draft regulation). The definition of SMEs in § 2 (2) – (4) of the draft regulation corresponds to the definition given in point 10.2. of Chapter 10 of the Authority's State Aid Guidelines on aid to SMEs.

The production company is required to provide 50% of the project's budget as own capital. This means that the loan amount will in principle not exceed 50% of the project's budget. However, in exceptional cases<sup>8</sup>, the amount covered by business development loans may exceed 50% (cf. § 7 (4) of the draft regulation).

Pursuant to § 7 (2) of the draft regulation, “business development loans” may be granted for the following types of activity:

- the purchase of services in relation to the development of employees' competence in the fields of management, economy, new technology, copyright law and feasibility studies for new projects
- measures which particularly contribute to the co-operation between SMEs, promotion of culture and cultural heritage

The aid element contained in loans for the activities enumerated in § 7 (2) shall not exceed 50% of eligible costs.

Pursuant to § 7 (3) of the draft regulation, “business development loans” may also be granted for the following types of activity:

- investment aid in fixed assets, including the take-over of other SMEs
- aid for the purchase of R&D-related services, including training and purchase of services for development of know how in advanced technology.

The aid element contained in loans for the activities enumerated in § 7 (3) shall not exceed 15% of the eligible costs for small and 7.5% of the eligible costs for medium sized enterprises.

The Norwegian Government confirmed that the eligible costs, taken into account when assessing the permissible aid amount, would be determined in accordance with Chapter 10 of the Authority's State Aid Guidelines.

The Norwegian Government assured the Authority that the Norwegian Film Fund would establish an individual and mandatory control procedure for each application in order to ensure that the aid intensity of the interest free loans would not exceed the ceilings specified in § 7 of the draft regulation. The aid intensity would be calculated in accordance with Chapter 3 of Annex X to the Authority's State Aid Guidelines.

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<sup>8</sup> It must be demonstrated that the project contributes in an exceptional degree towards the fulfilment of the support measure's stated objectives.

The Norwegian Government assured the Authority that the aid ceilings for business development aid applied to cumulated aid. For that purpose, § 7 (4) of the draft regulation stipulates that any prior aid granted to the same project is taken into account when determining the public support's share of the costs.

## II. APPRECIATION

### **State aid within the meaning of Article 61 of the EEA Agreement and notification requirement**

Article 61 of the EEA Agreement stipulates: "*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, insofar as it affects trade between the Contracting Parties, be incompatible with the functioning of the Agreement.*"

The concept of aid applies to any advantage, financed out of State resources and granted directly by the State itself or by an intermediary body acting by virtue of powers conferred on it. The Norwegian Film Fund will administer the new support measure to film production companies. This fund will receive State budgetary allocations for the purpose of granting support to film production companies (cf. State Budget for 2002, Chapter 334, post 50). It can therefore be concluded that film support is granted by the State.

The aid gives undertakings, i.e. independent film production companies, a financial benefit they would not have enjoyed in the normal course of business. It thus strengthens the financial position of the eligible film production company compared with other undertakings engaged in film production within the EEA.

State aid to specific undertakings is regarded to affect competition and trade between the Contracting Parties, if the recipient firm carries on an economic activity involving trade between the Contracting Parties. Cinema productions may be shot in different alternative locations within the EEA. Films are subsequently traded between the Contracting Parties to the EEA Agreement and may compete to attract audience. Production aid (including pre-production aid for project development and post-production aid for marketing and promotional activities) may therefore alter the competition existing between different locations for the realisation of a film and influence the trading conditions for their commercialisation. Therefore, the proposed aid can be considered as distorting competition and affecting trade between the Contracting Parties.<sup>9</sup>

Against this background, the notified support measures for film production companies constitute aid within the meaning of Article 61 (1) of the EEA Agreement.

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<sup>9</sup> See Judgment of the European Court of Justice, Case 730/79, *Philip Morris Holland BV v Commission*, [1980] ECR 2671, para. 11.

Pursuant to Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement, “[t]he 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”.

The Norwegian Government notified the new support measure in May 2002. The Norwegian Government confirmed that the new measure would only be put into effect once the Authority had given its approval. Consequently, the Authority has concluded that the Norwegian Government complied with its obligations pursuant to Article 1 (3) of Protocol 3 to the EEA Agreement.

## **Compatibility of Aid Measures**

### ***Project development aid***

In line with its previous practice<sup>10</sup>, the Authority assessed the new support measure in the form of project development aid to film production companies on the basis of Article 61 (3)(c) of the EEA Agreement, while taking into consideration the criteria developed by the EC Commission under Article 87 (3)(d) EC.

According to Article 61(3)(c) of the EEA Agreement “...aid to facilitate the development of certain economic activities or of certain economic areas...may be considered compatible with the functioning of this Agreement...where such aid does not adversely affect trading conditions to an extent contrary to the common interest”.

Operating aid which relieves a company of costs which should normally be borne by it is, in principle, incompatible with the functioning of the EEA Agreement<sup>11</sup>. Such aid may, exceptionally, be regarded as compatible with the functioning of the EEA Agreement according to Article 61 (3)(c) of the EEA Agreement provided that the aid pursues objectives which are in the common interest of the Contracting Parties and that the aid is necessary for and proportionate to the objectives pursued.

The development of film production and a stable environment for film production companies lies within the common European interest.

When assessing whether the aid scheme in question is necessary and proportionate to the objectives pursued, the Authority examined, in light of the EC Commission’s communication on cinema<sup>12</sup>, the following:

- whether the aid scheme respects the ‘general legality principle’ (i.e. it must be verified that the scheme does not contain clauses that would be contrary to

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<sup>10</sup> Authority’s Decision of 18 December 2000 regarding the Act on Temporary Reimbursements in respect of Film Making in Iceland (Act No. 43/1999), SAM 030.99.002 – Iceland; Authority’s Decision of 20 February 2002 regarding support to film production and film related activities in Norway, SAM 030.01.001.

<sup>11</sup> Judgment of the Court of First Instance, Case T-459/93 *Siemens SA v. Commission* [1995] ECR II-1675.

<sup>12</sup> EC Commission’s communication on cinema: COM (2001) 534 final, 26.09.2001, p. 6.

- provisions of the EEA Agreement in fields other than State aid (including fiscal provisions) and
- whether the scheme fulfils the ‘specific compatibility criteria’ for aid, set out by the EC Commission in its 1998 decision on the French film support scheme.

#### *Respect of the general legality criterion*

In this context, the Authority had to ascertain that the film support mechanisms foreseen in the regulation as notified did not contain clauses contrary to the basic principles and freedoms as enshrined in the EEA Agreement. Compliance with these principles requires, *inter alia*, that aid schemes must not reserve the aid for nationals exclusively, nor require beneficiaries to have the status of national undertaking established under national commercial law (undertakings established in one country within the EEA and operating in another by means of a permanent branch or agency must be eligible for aid).

§ 2 of the draft regulation contains a provision that clarifies that production companies established in a country that is a Contracting Party to the EEA Agreement are regarded as Norwegian film production companies for the purpose of this regulation. This means that production companies registered within the EEA may apply for support under the new support measure under the same conditions as production companies registered in Norway.

Therefore, the Authority concluded that the film support mechanisms respected the general legality criterion.

#### *Specific compatibility criteria*

In the “French” decision, the EC Commission developed a number of requirements which need to be fulfilled in order for the aid to be permissible under the cultural exemption.<sup>13</sup> In light of these requirements, the Authority verified that the aid is directed towards a cultural product, that the aid does not exceed the permissible aid ceilings, that no aid supplements are granted and that the film production company is free to spend at least 20% of the budget in other EEA States.

##### *1. Cultural content of eligible film projects*

The cultural content of eligible films must be ensured, in order to avoid that certain audiovisual productions which do not contribute to culture, such as commercials, receive State support.

The Authority observes that the new film support mechanism pursues the objective of creating the framework conditions for a stable film production environment. The measure is designed to ensure that only high quality films with sufficient market potential are produced.

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<sup>13</sup> EC Commission decision of 3 June 1998 on the French film support programme (State aid N 3/98), published in OJ C 279, 8.9.1998, p. 4.



The Authority was therefore satisfied that the aid granted under the new support measure for film production companies is directed towards a cultural product.

### *2. Permissible aid intensity (necessity and proportionality of the aid)*

In order to strike a balance between the objectives of promoting film production and maintaining conditions of undistorted competition, aid must be limited to what is necessary and proportionate. In the “French” decision, an aid ceiling of, in principle, 50% was regarded as justified in order to stimulate normal commercial initiatives inherent in a market economy and to avoid a bidding contest between the Contracting Parties.

The new support measure is limited to 50% of the project’s budget (i.e. own capital requirement of 50%). The Norwegian Government confirmed that the aid element contained in the business development loans would not exceed the aid ceiling of 50% of the project’s costs.

Grants for project development under the notified new support measure will be taken into account when determining the level of State support for possible subsequent film production. Any aid received by the film production company in the form of aid to project development would be taken into account/deducted from the aid available under the *feature film production support mechanism* as well as the support in the form of *50/50 grants*.<sup>14</sup> Support for project development will therefore be subject to the aid ceilings permissible under these support mechanisms.<sup>15</sup>

Since public support under the new measures will be subject to the cumulation rules as laid down in the regulations for film support, the Authority was satisfied that the new measures would not increase the aid level above that approved in its Decision of 20 February 2002.

In light of all the above considerations, the Authority has concluded that the proposed support measure for film production companies is limited to what is necessary and proportionate to the achievement of the cultural objectives pursued.

### *3. Aid supplements*

Aid supplements for certain specific activities must be avoided to ensure that the aid has a neutral incentive effect.

In this respect, the Authority notes that there are no aid supplements in the notified aid measure.

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<sup>14</sup> Production support for feature films, including support for project development, as well as production support based on market potential (so-called “50/50 grants”) were part of support measures governed by the regulation of 8 February 2002 on film production and approved by the Authority in its decision of 20 February 2002. For a more detailed description of these measures, reference is made to this decision.

<sup>15</sup> Higher aid intensities than 50% of production costs have been accepted by the Authority in its decision of 20 February 2002 with respect to the *feature film production support mechanism*.

#### 4. 20% requirement

The producer must be free to spend at least 20% of the film budget in other EEA States, which favours exchanges within the EEA. In other words, the full aid must still be available if only 80% of the budget is spent within the Member State that awards the aid.

The definition of eligible Norwegian film does not contain any territory-related criteria linked to the realisation in Norway of a particular proportion of the production work. The Authority therefore concluded that the proposed film support mechanisms respect the condition that a minimum proportion of 20% of the film budget may be spent in other EEA States with the full availability of the aid.

#### *Conclusions regarding the compatibility of project development grants*

In light of the foregoing considerations, the Authority concluded that the aid granted in the form of project development aid was compatible with the functioning of the EEA Agreement.

#### ***Business development loans***

Aid granted for film production companies without being linked to a specific film project, cannot be assessed as aid for the cultural product, i.e. the film, based on the “cultural exemption”.

Since this kind of aid is limited to SMEs within the meaning of point 10.2. of Chapter 10 of the Authority's State Aid Guidelines, the Authority assessed the aid schemes under this Chapter of the Authority's State Aid Guidelines.

#### *Aid for consultancy services (cf. § 7 (2) first indent of the draft regulation)*

Pursuant to point 10.3.2.3 (1) of the SME Guidelines, “[a]id of up to 50% gross will generally be allowed for consultancy services provided by outside consultants to new or established SMEs or for training given to their staff in such fields as management, financial matters, new technology (especially information technology), pollution control, protection of intellectual property rights or the like, or for the purpose of assessing the feasibility of new ventures. Each scheme will, however, be judged on its merits, with particular reference to the distance of the activity from the market-place, any cost ceilings for individual firms, any possibilities of combination with other forms of aid, and other relevant factors. In certain exceptional circumstances, the Authority may allow aid of more than 50%...”

Point 10.3.2.3 (2) of Chapter 10 of the Authority's State Aid Guidelines emphasises that the aid should not cover “continuous or periodic aid not acting as an incentive and relating to the enterprise’s usual operating expenditure (routine tax consultancy services, regular legal services, advertising, etc.)”.

The Authority observes that the eligible activities referred to in § 7 (2) first indent of the draft regulation are in line with those mentioned in point 10.3.2.3 (1) of the SME Guidelines. As regards the eligible costs, the Authority takes note of the assurance

given by the Norwegian Government that the eligible costs would be determined in line with Chapter 10 of the Authority's State Aid Guidelines. Furthermore, the Authority notes that, pursuant to § 5 (3) of the draft regulation, no support shall be awarded to cover the operating costs of the film production companies.

The maximum aid intensity allowed under § 7 (2) of the draft regulation respects the aid ceiling set under the SME Guidelines. The Authority observes that § 7 (1) of the draft regulation allows for an own-capital contribution lower than 50% if the project in question contributes in an exceptional degree towards the fulfilment of the support measure's stated objectives. This does, however, not mean that the aid contained in the business development loans would exceed the 50% aid ceiling. Given the present reference rate of interest (for 2002, the Authority fixed the reference rate of interest for Norway at 6,32%<sup>16</sup>) and the duration of the loans (i.e. five years), the aid intensity will always remain below 50%. That could be different if in the course of the next five years the interest rates, as fixed by the Authority, would increase significantly. In this respect, the Authority noted that the Norwegian Government assured the Authority that mechanisms would be established to ensure that the aid element contained in the business development loans would not exceed the permissible ceiling of 50%.

The Norwegian Government assured the Authority that this ceiling would apply to cumulated aid, including aid granted from other sources (in particular SME aid schemes).

Finally, the Authority took note of the explanations provided by the Norwegian Government as regards the need for public support for such consultancy services. According to the Norwegian Government, public support in this area relieves SMEs of costs generated by the purchase of external know how and thus compensates for a competitive disadvantage faced by SMEs on the domestic and European film market.

Consequently, the aid granted for consultancy services pursuant to § 7 (2) first indent of the draft regulation is in line with the SME Guidelines.

*Aid for co-operation between SMEs and promotion of culture and cultural heritage (cf. § 7 (2) second indent of the draft regulation)*

Point 10.3.2.8 of the SME Guidelines opens up for the possibility to grant aid for other purposes as those otherwise enumerated in the Guidelines, provided that these aid measures do not affect trading conditions and competition to an extent that is contrary to the common interest. The Guidelines refer, by way of example, to aid designed to help SMEs "...by encouraging cooperation between them..." or to aid "...to promote culture and heritage conservation...".

The activities mentioned under § 7 (2) second indent of the draft regulation are in line with the measures enumerated under point 10.3.2.8 of the SME Guidelines. Aid may be granted up to 50% of eligible costs.

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<sup>16</sup> Reference rates of interest as from 1 January 2002 published on the Authority's homepage: <http://www.efsa.int/structure/SURV/efsa-srv.asp>

Consequently, the aid granted for co-operation between SMEs and promotion of culture and cultural heritage pursuant to § 7 (2) second indent of the draft regulation is in line with the SME Guidelines.

*Investment aid in fixed assets (cf. § 7 (3) first indent of the draft regulation)*

Aid provided for under § 7 (3) first indent of the draft regulation, including aid related to the takeover of SMEs, was assessed as investment aid in accordance with point 10.3.2.1 of the SME Guidelines. § 7 (3) first indent of the draft regulation concerns investments in tangible assets as defined under point 10.3.2.1. (1) of the SME Guidelines. The aid intensities are in line with those mentioned in point 10.3.2.1 (3) of the guidelines.

With respect to the possibility to grant aid for company take-overs the Norwegian Government stressed the importance of encouraging co-operation and mergers and acquisitions in order to contribute to the development of small and medium sized film enterprises acting on a market that is dominated by large multinational corporations.

The Authority also took note of the explanation provided by the Norwegian Government showing that the film production companies in Norway have a poor cash flow situation and encounter difficulties in acquiring capital on the market. These SME specific difficulties justify public support as provided for in § 7 (3) first indent of the draft regulation.

Consequently, investment aid granted pursuant to § 7 (3) first indent of the draft regulation is in line with the SME Guidelines.

*Aid for R&D related services (cf. § 7 (3) second indent of the draft regulation)*

Pursuant to point 10.3.2.2 (1) of the SME Guidelines, aid designed to encourage SMEs to use advanced technology and know how may be authorised within the aid ceilings of investment aid (i.e. 15% in the case of small enterprises or 7.5% in the case of medium-sized enterprises).

Aid provided for in § 7 (3) second indent of the draft regulation provides public support for the purchase of R&D related services, including training and purchase of services for development of know how in advanced technology. The aid is thus in line with point 10.3.2.2 (1) of the SME Guidelines, in particular with respect to the permissible aid ceilings.

Consequently, the aid granted for R&D related services pursuant to § 7 (3) second indent of the draft regulation is in line with the SME Guidelines.

Finally, and with respect to all the above-mentioned aid measures, the Authority takes note of the assurance given by the Norwegian Government that the aid intensity of the individual business development loans will be assessed individually and based on the provisions contained in Chapter 3 of Annex X to the Authority's State Aid Guidelines.

*Conclusions regarding the compatibility of “business development loans”*

The Authority could therefore conclude that the proposed aid in the form of business development loans is in line with the requirements laid down in the SME Guidelines (Chapter 10 of the Authority's State Aid Guidelines). Consequently, the aid can be declared as compatible with the functioning of the EEA Agreement (in particular Article 61 (3)(c) thereof).

***Conclusions***

In view of the foregoing considerations, the Authority regards the notified support measures for film production companies, as notified to the Authority, as compatible with the functioning of the EEA Agreement, and in particular with Article 61 (3)(c) thereof. The Authority accepts the validity of the regulation as being limited to five years.

Finally, the Authority reminds the Norwegian Government of its obligation to submit annual reports regarding the implementation of the film support scheme in accordance with Chapter 32 of and Annex IV to the Authority's State Aid Guidelines.

**HAS ADOPTED THIS DECISION:**

1. The Authority has decided not to raise objections to the support for film production companies as notified by the Norwegian Government, for the period of five years.
2. The Norwegian Government is requested to submit simplified annual reports regarding the implementation of the scheme in accordance with Chapter 32 of the Authority's State Aid Guidelines.

Done at Brussels, 18 September 2002

For the EFTA Surveillance Authority

Einar M. Bull  
President

Hannes Hafstein  
College Member