

Case No: 57877
Event No: 325424
Dec. No: 179/05/COL

EFTA Surveillance Authority Decision
of 15 July 2005
regarding amendments to the Norwegian aid scheme
'support to audiovisual production'

(Norway)

THE EFTA SURVEILLANCE AUTHORITY

HAVING REGARD TO the Agreement on the European Economic Area¹, 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 Justice², in particular to Article 24 thereof and Article 1 in Part I of Protocol 3 thereof,

HAVING REGARD TO the Authority's Decision of 14 July 2004 on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Surveillance and Court Agreement³, in particular Article 4 thereof,

HAVING REGARD TO the Authority's Decisions of 20 February 2002⁴ and 29 October 2003⁵,

WHEREAS:

I. Facts

1. Procedure

By letter dated 28 June 2005 from the Norwegian Mission to the European Union, forwarding a letter from the Norwegian Ministry of Modernisation dated 23 June 2005 and from the Ministry of Culture and Church Affairs dated 20 June 2005, received and registered by the Authority on 29 June 2005 (Event No 324281), the Norwegian

¹ Hereinafter referred to as the 'EEA Agreement'.

² Hereinafter referred to as the 'Surveillance and Court Agreement'.

³ Decision No 195/04/COL, hereinafter "the Authority's Decision 195/04/COL".

⁴ Decision No 32/02/COL. The decision can be found on the Authority's website <http://www.eftasurv.int/fieldsOfWork/fieldStateAid/stateAidRegistry/>.

⁵ Decision No 186/03/COL. The decision can be found on the Authority's website <http://www.eftasurv.int/fieldsOfWork/fieldStateAid/stateAidRegistry/>.

authorities notified alterations to the Norwegian aid scheme ‘support to film production and film related activities’, Authority Decision No 32/02/COL⁶.

The Norwegian Ministry of Culture and Church Affairs had earlier, by letter dated 5 April 2005, informed the Authority of certain changes to that aid scheme. That letter, which was not a formal notification pursuant to Article 2 in Protocol 3 to the Surveillance and Court Agreement, was received and registered by the Authority on 11 April 2005 (Event No 315527). The Norwegian authorities have confirmed towards the Authority that the information contained in that letter should be considered as forming a part of the notification (e-mail received and registered on 30 June 2005, Event No 325770).

By letter dated 30 June 2005 (Event No 324385), the Authority acknowledged receipt of the notification.

On 4 July 2005, the Norwegian authorities submitted further information per e-mail, which was received and registered by the Authority on the same date (Event No 325421 and 325422).

2. Description of the aid measure

2.1 Description of the existing Norwegian support system for film production and film related activities and the Authority’s Decisions No 32/02/COL and No 186/03/COL

In its Decision dated 20 February 2002, the Authority authorised the Norwegian support scheme for film production and film related activities, which cover five different film support mechanisms, consisting of:

- *Production support for feature films, including support for project development,*
- *Support for the Norwegian part in international co-productions,*
- *Production support based on market potential (so called 50/50 grants)*
- *Production support for short films, including support for project development,*
- *Support in the form of box office returns.*

The criteria for the application of the scheme were laid down in a Regulation for the support of film and film related activities of 8 February 2002 (*Forskrift for tilskudd til filmformål*).

In April 2003, the Norwegian authorities notified certain amendments to that scheme, to cover in particular the production of TV series and interactive production. The Regulation was consequently renamed as Regulation for the support of audiovisual production (*Forskrift om tilskudd til audiovisuelle produksjoner*). These alterations were authorised by the Authority’s Decision of 29 October 2003.

Norway submitted reports on the application of the scheme in 2003 by letter 16 July 2004 (Event No 288002). The annual report on the application of the scheme in 2004 will be submitted by the Norwegian authorities, as the Authority has agreed to extend the deadline to submit the annual reports⁷.

⁶ The scheme was later renamed, see below I.2.1 of this Decision.

⁷ Letter by the Authority dated 30 June 2005, extending the deadline to submit annual reports provided for in Article 6 of the Authority’s Decision 195/04/COL.

2.2. Legal basis/Duration of the scheme/Budget

The scheme as notified is based on the amended Regulation on support for audiovisual production (*Forskrift om tilskudd til audiovisuelle produksjoner*, hereinafter the “Regulation”). The amendments entered into force on 28 January 2005.

The aid scheme came into effect on 8 February 2002 and will still be applied during a five year period until 8 February 2007.

The overall budget for the year 2004 of the scheme was notified by Norway to be at NOK 236 840 000⁸.

2.3 The notified amendments to the support scheme

With the current notification, the Norwegian authorities notify the Authority of amendments to the support scheme for audiovisual production, which in their view represents a tightening of the criteria for the application of the scheme.

The Norwegian authorities therefore would like avail themselves of the simplified notification procedure, as stipulated in Article 4 of the Authority’s Decision No 195/04/COL.

They describe the notified changes as follows:

2.3.1 *Box office support - inclusion of income from secondary markets*

Under the abovementioned support mechanism ‘box office returns’, support will be provided with the aim of increasing the number of films with market potential.

According to former provisions of the aid scheme, the aid amounts to 55% of the film’s gross box office receipts from screening in Norway. The support may however not exceed the sum of the producer’s own financing (“*egenfinansiering*”, as approved by the Norwegian Film Fund) and his overheads minus the income which the producer has from box office revenues and film rent (former section 8-3 of the Regulation)⁹. The income from ‘film rent’ was meant to cover income only from film rent for theatrical distribution in cinemas and estimated to be at 25% of the gross income of the distribution.

The new Regulation extends Article 8-3 to also include income which the producer receives from video/DVD and TV distribution, in addition to the revenue from theatrical distribution in cinemas. Such revenues are estimated to be at 50% of the gross income of the distribution. This means that a higher amount of revenues will be deducted from the box office support granted by the Norwegian Film Fund. The Norwegian authorities underline that with that change the producer will consequently be entitled to less box office support than in the past.

2.3.2 *Repayment of support now also covers box office support*

⁸ In the Parliamentary’s final budget resolution (‘saldert budsjett’) 2004, however, the budget for the Norwegian Film Fund was at NOK 228 500 000 plus an additional 26 175 000 for audiovisual production support.

⁹ See also the passage ‘box office returns’ in the Authority’s Decision 32/02/COL. This leads to the following formula for establishing the maximum amount of support: box office support + film rent ≤ producer’s own financing + overheads.

The scheme provides for a repayment obligation of parts of the support, once the project generates net revenues. Under the former section 1-6 of the Regulation, a repayment obligation existed only for production support for feature films, co-productions, support granted as 50/50 grants and support for TV series, when a film/series generated revenues. The net revenues were defined as the income which exceeds the producer's approved own financing and overheads, the latter are fixed as being 30% of the approved own financing¹⁰.

Under the amended section 1-6 of the Regulation, aid from box office support will now also be included in the calculation of the repayment (by now also referring to section 8 of the Regulation). In addition, the producer is now required to pay back 35% of the net income. In the past, the repayment was calculated at 30% of the net income multiplied with the percentage share of the State support in the project's budget. This meant that the amount of the repayment would depend on the amount of aid contained in the project. While low equity projects would be submitted to a higher repayment (due to the higher state support), projects financed with a higher percentage of the producer's equity would pay back less. With the change, all projects supported will repay 35% of the net income. As this percentage is no longer multiplied with the aid ratio, but directly linked to the net revenues, this change also results in a larger part of the net revenues being paid back under the amended scheme.

2.3.3 Box office support - increase in the production budget after payment of the first instalment no longer taken into account

In the past, for box office support, under special circumstances, an increase in the production budget of the project after the payment of the first instalment could be taken into account, when calculating the box office support (former section 8-3 (2) of the Regulation). This was done by accepting an increase in the own financing as authorised by the Norwegian Film Fund, which would lead to an increase of the support¹¹. This section has now been deleted with the new Regulation.

However, the Norwegian Film Fund, for the purpose of repayment of aid (section 1-6 of the Regulation), may now, in exceptional cases, accept an increase in the own financing for repayment calculation purposes.

2.4 Other changes

The Authority noted during the investigation that the new Regulation contains some other changes, which were not explicitly mentioned by the Norwegian authorities in their notification of 28 June 2005. The Norwegian authorities however state that these changes do not concern the substance of the aid scheme, but are of a formal and administrative nature to make the text of the Regulation more precise.

¹⁰ See also passage 'repayment obligation' in the Authority's Decision 32/02/COL and section 3.4 of the Authority's decision 186/03/COL on TV productions.

¹¹ See above, point 2.2.1. of this Decision for the calculation of the box office support.

II. Appreciation

1. Procedure

In its present decision, the Authority will only evaluate the changes notified to it by the Norwegian authorities in the letter dated 28 June 2005, in conjunction with the information delivered by the Norwegian authorities on 5 April 2005 (i.e. box office support and repayment obligation).

For these changes, the Norwegian authorities rely on the simplified notification procedure in Article 4 of the Authority's Decision No 195/04/COL. In the view of the Authority, the changes mentioned under point I 2.3.1 and 2.3.2 of this Decision tighten the criteria for the application of the aid scheme.

By also taking into account other income from secondary markets for granting box office support (see point 2.3.1 of this Decision), the aid amount to the producer will in all likelihood be reduced, in any event it would not increase.

Likewise the repayment obligation is now tightened by also extending it to the box office support and by linking the repayment to a 35% percentage to the net income (see point 2.3.2 of this Decision), independent of the aid ratio.

The Authority notes that a production budget increase will no longer be taken into account for calculating the box office support, which tightens the criteria for the application of the scheme (2.3.3 of this Decision) and would lead to less aid being granted in this respect.

However, the Authority also notes that the new section 1-6 of the Regulation allows for the consideration of an equity increase for the purpose of the repayment obligation, which was not provided for under the former Regulation. This rather extends the application of the aid scheme in this respect, as the repayment obligation is related to the net revenues, which are defined as the amount which exceeds the producer's own financing and overheads. With a higher share of approved own financing, the repayment amount would consequently be lower. The Authority therefore considers that amendment not to be a 'tightening of criteria for the application of an authorised scheme', which consequently does not fall under the simplified notification procedure provided for in Article 4 in Decision No 195/04/COL. As the Authority had sufficient information to assess the measure in substance, it did not, however, ask the Norwegian authorities to notify the measure by using the standard notification form referred to under Article 2 of Decision No 195/04/COL.

The Authority further notes that Norway met its reporting obligation under Article 6 of Decision No 195/04/COL, see Article 4 (3) of Decision No 195/04/COL.

The Authority regrets, however, that Norway put the alterations which were adopted in the Regulation of 28 January 2005 into effect and only notified them in June 2005, which is in breach of Article 1 (3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

2. State aid within the meaning of Article 61 (1) of the EEA Agreement

As stated in its earlier decisions No 32/02/COL and No 186/03/COL, the Authority considers the different support measures for film production and related activities to be

state aid within the meaning of Article 61 (1) of the EEA Agreement. The current amendments do not alter that finding.

3. Compatibility of the aid under Article 61 (3) c) of the EEA Agreement

However, the Authority considered the aid to be justified under Article 61 (3) (c) of the EEA Agreement, applying the criteria of the Commission's communication on cinema and other audiovisual work¹². The Authority takes the view that the changes notified by the Norwegian authorities in the letter dated 28 June 2005, do not alter its findings in its Decisions No 32/02/COL and No 186/03/COL.

As to the inclusion of revenues from secondary markets for box office support and a broader repayment obligation also covering box office support and based on the net income of the project, the Authority notes that the tightening of the aid criteria does not compromise the accepted objective of the aid scheme to foster quality film production. This also applies to the deletion in section 8-3 of the Regulation in order to no longer take a production cost increase after the payment of the first instalment into account. The changes would rather decrease the authorised aid intensities¹³.

In particular, the acknowledgment by the amended Regulation that the aid will be reduced when a project generates commercial revenues from a presently wider distribution of the films (via DVD, video, TV), is in line with Article 61 (3) (c) of the EEA Agreement. In accordance with the requirements under Article 61 (3) (c) of the EEA Agreement the state aid should be limited to the necessary and proportionate amount to achieve the objective of the aid while not distorting competition to an extent contrary to the common interest.

As to the change that in exceptional circumstances the Norwegian Film Fund might consider an increase in the own financing for the repayment calculation purposes, the Authority notes that the Commission's communication on cinema and other audiovisual work does not contain any requirements as to the repayment of an aid, i.e. an aid which was judged necessary and proportionate to achieve the production of quality films (and related products) in case of commercial success. Acknowledging further, that section 8-3 of the Regulation has been deleted, which would have provided for the grant of additional aid in cases of a production cost increase, the Authority does not find that the amendment of the repayment obligation has any bearing on the ascertained compatibility of the support measures for audiovisual production.

4. Conclusion

The Authority finds that the notified alterations to the aid scheme do not alter its previous assessment in Decisions No 32/02/COL and No 186/03/COL that the support scheme for film and related activities is compatible with the functioning of the EEA Agreement.

Norway is reminded about its obligation resulting from Article 21 in Part II of Protocol 3 to the Surveillance and Court Agreement in conjunction with Article 6 of Decision No 195/04/COL to provide annual reports on the implementation of the scheme.

¹² COM (2001) 534 final, 26.09.2001.

¹³ See Decision No 186/03/COL, point II 3.1.2 b (2) and Decision No 32/02/COL, point II 2.

HAS ADOPTED THIS DECISION:

1. The Authority decides not to raise objections to the notified alterations to the support scheme for audiovisual production.
2. This Decision is addressed to the Kingdom of Norway.
3. This Decision is authentic in the English language.

Done at Brussels, 15 July 2005

For the EFTA Surveillance Authority

Einar M. Bull
Acting President

Kurt Jäger
College Member