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EFTA SURVEILLANCE AUTHORITY DECISION
OF 29 OCTOBER 2003
ON PROPOSED SUPPORT MEASURES 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 and Protocol 26 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,³

HAVING REGARD TO the Authority's Guidelines⁴ on the application and interpretation of Articles 61 and 62 of the EEA Agreement,

WHEREAS:

I. FACTS

1. Procedure

The Norwegian authorities notified the Authority, by letter from the Norwegian Mission to the European Union dated 7 April 2003, forwarding a letter from the Ministry of Trade and Industry dated 2 April 2003, pursuant to Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement⁵, of support measures for

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

³ As amended by the EFTA States on 10 December 2001. The amendments entered into force 28 August 2003.

⁴ Procedural and Substantive Rules in the Field of State Aid - 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 03.09.1994 No. 32, last amended by the Authority's Decision No 264/02/COL of 18 December 2002, not yet published, hereinafter referred to as the 'Authority's State Aid Guidelines'.

⁵ Protocol 3 of the Surveillance and Court Agreement in the version before the amendments of 10 December 2001, which entered into force 28 August 2003.

audiovisual production relating to TV series and – as a trial project – for interactive production.

The letter was received and registered by the Authority on 8 April 2003 (Doc. No 03-2287-A). The Authority acknowledged receipt by letter of 11 April 2003 (Doc. No 03-2346-D).

By letter dated 9 May 2003 (Doc. No 03-2833-D), the Authority requested additional information. The Norwegian Government submitted the requested information by letter from the Norwegian Mission to the European Union dated 19 June 2003, forwarding letters from the Ministry of Trade and Industry and the Ministry of Culture and Church Affairs, both dated 11 June 2003. The letter was received and registered by the Authority on 20 June 2003 (Doc. No 03-3980-A).

On 26 June 2003 a meeting took place between the EFTA Surveillance Authority, the Norwegian Ministry of Trade and Industry, the Ministry of Culture and Church Affairs and the Norwegian Film Fund. Following that meeting, the EFTA Surveillance Authority sent an additional information request, dated 18 July 2003 (Doc. No 03-4807-D). The Norwegian Mission to the European Union replied to the information request in a letter dated 4 September 2003, forwarding letters of the Ministry of Trade and Industry and the Ministry of Culture and Church Affairs dated 3 September 2003. The letter was received and registered by the Authority on 8 September 2003 (Doc. No 03-6081-A).

By letter dated 20 October 2003 (Doc. No 03-7272-A), the Norwegian authorities informed the EFTA Surveillance Authority about a budgetary proposal for 2004 which increases the budgetary allocation for project development regarding new media (i.e. the support for interactive productions) from NOK 3 to 8 million.

2. General description of the notified aid measures

2.1 Description of the existing Norwegian support system for film production and film-related activities and the Authority's decision No 32/02/COL of 20 February 2002

The notified support measures for TV series production and interactive production will be integrated in the existing support scheme for film and film-related activities. In its notification, the Norwegian Authorities explicitly refer to the earlier notification of the regulation for film support ("*Forskrift for tilskudd til filmformål*") in Norway, which was notified to the EFTA Surveillance Authority by letter dated 18 April 2001 (Doc. No. 01-3059-A). On 20 February 2002, the EFTA Surveillance Authority adopted its decision not to raise objections (College Decision No 32/02/COL) against the support scheme. For a better understanding of the present amendments to, and extensions of, the existing film support scheme, a brief overview will highlight the main features of the existing film support scheme.

The existing regulation for film support, as authorised by the Authority in its Decision No 32/02/COL of 20 February 2002, covers five different film support mechanisms. These measures consist 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 support schemes are administered by the Norwegian Film Fund. Support under this scheme is only given to “Norwegian independent audiovisual producers”. A Norwegian independent audiovisual producer is defined in section 1-3 of the regulation as a production undertaking, which

- has audiovisual production as its main objective;
- is either a company registered in the (Norwegian) register of business enterprises as a producer, or a foreign company with a registered branch (in Norway) provided that the head of the branch is a Norwegian citizen or is domiciled in Norway; and which
- is not, to any considerable degree, connected to a private or public broadcasting company. A considerable connection exists where over 25% of the shares of the company are owned by a single broadcasting company, or 50%, where several broadcasting companies are shareholders.

As regards the third criterion, the Norwegian authorities clarified for the present notification that the independence is measured exclusively on the basis of shareholding, and does not take into account whether an audiovisual producer derives his revenues mainly, or exclusively, from a single broadcaster, even if this might reflect a *de facto* dependence. Audiovisual companies would still be eligible for support even if they generate *all* of their revenues from a single broadcaster. The reason is that in the small market of Norway, there are only three broadcasting companies that acquire independent productions regularly, so that continuous business relations between a producer and one broadcaster are unavoidable.

Independent production companies registered in another country which is a Party to the EEA Agreement, shall be regarded as a Norwegian producer for the purpose of this regulation.

The regulation does not contain any territory-related criteria linked to the realisation of a particular proportion of the production work in Norway.

The support will be given “*selectively*”, which means that the grant of the aid and the aid level will be determined by the so-called Commissioning Executives and the Board of Governors of the Norwegian Film Fund for each project *individually*. This individual analysis will take into account the artistic, technical, economical, production-related and marketing merits of the project. Payments will be made in instalments for the achievement of identifiable milestones and a professional film consultant will continuously monitor TV production (including TV series production).

The scheme came into effect on 8 February 2002 and will be applied for a period of five years. Further details on the five support measures of the existing support scheme can be taken from the Authority’s Decision No 32/02/COL of 20. February 2002.

2.2 *General amendments to the existing support scheme for film and film-related activities*

The integration of the new support measures for the production of TV series and interactive production, requires amendments to the existing regulation for film support. In addition, amendments are carried out with regard to the existing aid schemes for film support, which according to the Norwegian Government should make some of the requirements for obtaining support more stringent (see 2.2.5 and 2.2.6). The amendments to the existing support scheme are as follows:

- 2.2.1 The name of the regulation changes from “support to film production and film related activities” to “support to audiovisual production” (“*Forskrift for tilskudd til audiovisuelle produksjoner*”).
- 2.2.2 The purpose of the regulation (Section 1-1) has also now been extended to cover audio-visual production other than films. According to Section 1-1, the support scheme is to advance audio-visual productions as a means of cultural expression and to contribute to meeting the goals in the audio-visual sphere. The main goal is to ensure quality and varied Norwegian audio-visual productions. As a result the following goals should be achieved: the productions should create a large public interest in Norwegian audio-visual productions, develop ideas, talent and expertise, ensure access of children and young people to audiovisual productions, ensure a strong, professional production environment and cost-effective productions, and safeguard, promote and raise, the profile of Norwegian audio-visual productions.
- 2.2.3 The section on “definitions” has been extended to cover TV series and interactive production (Section 1-3)⁶. The definition of short films has been clarified and now covers films of less than 72 minutes which are produced with a view to being shown in the cinema, on television or by other media.
- 2.2.4 The repayment obligation in Section 1-6 for production support for films, once the film generates net revenues, has been extended to cover TV series.
- 2.2.5 The rules for receiving support for feature films under the 50/50 scheme have been amended. In order to receive support there must now be a minimum number of 100 000 expected visitors. (Section 4-1).
- 2.2.6 The number of support instalments for *feature films* has been reduced from six to four. The requirements which the producer has to fulfil, have not changed in substance, but have been combined in order to match the reduced number of instalments. The same applies to *TV series production* (chapter 9 of the regulation). For *short films*, the number of instalments has been reduced from four to three. The requirements for the producer have been adapted accordingly (chapter 10 of the regulation).
- 2.2.7 Two new chapters have been introduced. The new Chapter 6 covers the special rules for support for television series. Chapter 7 contains the specific provisions for interactive production support. The former chapters 6 and 7 on

⁶ As explained later under section 3 and 4 of this decision.

box office returns and rules on payment and control of grants for feature films, will become chapters 8 and 9 respectively⁷.

The new measures are envisaged to last for a period of five years. They will be integrated into the existing scheme and will expire on the same date as the current support scheme for film and film-related activities, i.e. on 8 February 2007. The Norwegian authorities underline that the support for interactive production is introduced as a trial project which will be reassessed in 2007.

In the following, a more detailed description will be given on the support measures for TV series production and interactive production.

3. *Support for TV series production*

According to the Norwegian authorities, the support for TV series production follows a cultural objective and will contribute to the production of more quality series for television. It is intended to show more series made by independent producers on TV, and to stimulate co-operation between television companies and independent audiovisual producers. The cooperation between broadcasters and independent producers should provide for a greater financial platform needed for the production of quality TV series, and the increased participation of independent producers should guarantee that the quality objective is met. The scheme is, in general, directed to productions with restricted market potential and budgets.

The existing support measures for feature films are not apt for this purpose, since, in particular, the support of feature films can only be granted to films intended for cinema performance and, in any event, are only applied to films lasting longer than 72 minutes. The short film support measures are equally not tailored to cover sequential episodes.

3.1 The definition of TV series

Chapter 6 covers the support for the production of TV series. TV series cover either separate episodes placed in a series or a course of events divided into episodes (Section 6-1, first paragraph).

In the following, an overview will be given on the financial parameters for film and TV series production in Norway

3.2 Financial parameters for film and TV series production in Norway

According to information provided by the Norwegian authorities, the Norwegian market for audiovisual productions offers only a very limited market potential for *Norwegian productions*. This is because the domestic market is small and there are not sufficient revenues from export markets.

The Norwegian authorities state that it is hard to find meaningful figures which just reflect the situation of TV series, since this information goes beyond the normal reporting obligations required from broadcasters by Norwegian law. However, the

⁷ The new chapter 9, formerly chapter 7, now also extends to the payment conditions for TV series production.

general situation of Norwegian productions in the audiovisual market – as elaborated upon already in the Authority’s Decision No 32/02/COL of 20 February 2002 – also applies to TV series. Norway has consequently delivered a general description of the audiovisual market in Norway and the possibilities for exporting TV productions. Further, it has made inquiries among Norwegian broadcasters to find out about the number of Norwegian TV series shown in Norway and the number of such series exported to other countries.

Domestic market

The Norwegian authorities firstly submit that the *domestic market* for audiovisual production is too limited to offer sufficient economics of scale for national production. The Norwegian audience of 4,5 million is too small to generate sufficient revenues. Production companies are usually very small and employ few people. There are 80 audiovisual production companies which generate a joint turnover of NOK 800-1000 million in Norway. But only a few of these production companies are in continuous production and the number of production companies exceeds the number of films produced annually⁸.

Norway argues that international productions dominate the viewing time for films and television series. For example, feature films subsequently shown on television, are mainly of North-American origin and originate only rarely from Norway. In 2000 and 2001, feature films shown on the public service broadcaster NRK, originated 10% from Norway, 4% (2000) to 5% (2001) from other Nordic countries, 29%-18% from other European countries, and 45% to 53% from North America. For the private broadcaster TV 2, the quota of American productions in 2000/2001 was significantly higher, with 85% American productions and only 3% Norwegian productions.

For TV series, the Norwegian authorities submit the following table which shows the viewing time for Norwegian produced TV series, EEA production and non EEA production. As can be seen from the table below, the share of Norwegian productions is indeed limited. The share of Norwegian TV series – based on viewing time, were 7.9%, 11.4% and 5.3 % for NRK 1 in the years 2000-2002, whereas no Norwegian productions have been shown on NRK 2. For TV 2, which, particularly in the year 2000, had a huge amount of non-EEA productions, the share of Norwegian productions were 6.7%, 10.5% and 9.15%.

⁸ The accumulated annual turnover of the companies engaged in continuous feature film production is estimated to be approximately 200-300 million NOK. As regards feature films – which under the existing film support scheme is defined as films with a screening time of at least 72 minutes produced for cinema release and screening – Norwegian films only acquired a 9% market share during the years 1999-2002.

Television Series Yearly Aired on Norwegian TV 2000-2002 (First-Run Script-Based Series):

		NORWEGIAN			OTHER EEA			NON-EEA		
		2000	2001	2002	2000	2001	2002	2000	2001	2002
NRK 1	# Titles	30	11	16	36	31	41	47	7	23
	# Hours	21	27	18	145	142	166	101	66	156
NRK 2	# Titles	0	0	0	5	12	9	16	13	12
	# Hours	0	0	0	57	60	37	150	113	177
TV2	# Titles	5	6	6	30	19	17	44	40	34
	# Hours ¹⁾	118	133	114	704	260	302	942	873	829
TV Norge	# Titles	1	3	1	n/a	n/a	n/a	n/a	n/a	n/a
	# Hours	3	10	4	n/a	n/a	n/a	n/a	n/a	n/a

Long-running series, spanning more than one year, are counted separately under each year.

1) For TV2, hours are presented as the sum of program slot time (i.e. ½ or 1 hour) and not actual duration of the title (26 and 52 min. respectively).

Export markets

In addition to the limited possibilities on the domestic market, the possibilities for Norwegian TV series productions for generating revenues outside the domestic market, are negligible.

The Norwegian authorities have requested information from broadcasters and obtained information that there are basically no sales of TV series to other countries. TV2 reports, that of the Norwegian-made series aired during the period 2000-2002, one (the crime series Fox Grönland) has been sold to Sweden and Denmark, and one (the children’s series Snöbarna) has been sold to Iceland and the UK (as well as to Cambodia and China).

TV Norge reports that one Norwegian made series, aired during 2001 (Nissene på låven), has been sold to Sweden and Denmark, while the NRK did not sell any series during the period 2000-2002.

Independent productions

In general, TV productions are made by broadcasters and only to a lesser extent by independent producers. The following table shows the percentage of independent TV productions in Norway according to transmission time. The table does *not* distinguish between TV series and other programmes in particular – as it will be elaborated upon later – as independent productions of TV series did not occur so far.

Independent productions as percentage of broadcaster’s transmission time (in the meaning of Council Directive 89/552/EEC of 3 October 1989⁹, excluding news, sports events, games, advertising and teletext services)

	1999	2000	2001	2002
NRK 1	11	12	18	24
NRK 2	9	16	32	30
TV 2	19	29	19	21
TV Norge	22	20	23	32

⁹ Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States, concerning the pursuit of television broadcasting activities, OJ L 298/23 of 17.10.1989.

3.3 Principal modes of TV production in Norway

In principle, there are three financing and production methods for TV series, which the Norwegian authorities summarised in the table below.

The production of TV series in Norway¹⁰

Mode of production	Role of broadcaster	Role of independent producer	Third party relations, rights
In-house	Undertakes whole production with own staff. Retains editorial responsibility.	None	Broadcaster handles third parties and retains all rights.
Com-missioning	Approves terms of production, number of episodes and financing. Provides funding and retains editorial responsibility.	Initiates project. Undertakes production in accordance with contract with broadcaster against set price.	Third party relations handled by independent producer, rights remain with producer. Income from exploitation of rights may be shared with the broadcaster.
	Contract between broadcaster and independent producer regulates licence period in broadcaster's territory, secondary rights, foreign rights.		
Co-fi-nancing	Provides key funding, acts as responsible editor. Airs programme/series.	Raises additional funding. Undertakes production in accordance with contract with broadcaster. Assume risk of budget deficit.	Third party relations handled by independent producer, who retains all rights. Income of exploitation might be shared with broadcaster.
	Contract between broadcaster and independent producer regulates licence period in broadcaster's territory, secondary rights, foreign rights.		

The Norwegian authorities submit that the influence of the producer is greatest under the model of *co-financing*. In the co-financing model of production, the production company takes the initiative to establish the partnership. The production company also organises the project and is responsible for raising the key funding to realise the production¹¹. Thus, the relative strength in the relationship between the producer and the television company is in the producer's favour. The financial flow in the project is routed through the producer, and the artistic responsibility also lies with the producer.

¹⁰ Table submitted by the Norwegian authorities.

¹¹ As it will be explained later, under the new support scheme it is still envisaged that the broadcaster, whose contribution is not open to support, contributes financially to the project.

This type of partnership is seen to provide a new dynamic to both the creative and commercial creation of television series.

Of the three financing methods described above, today only in-house production by the broadcaster and commissioned production, exists. Whereas the public service broadcaster NRK mainly relies on in-house production, private broadcasters mainly commission their productions¹².

According to the Norwegian authorities, *co-financed production* has not yet been used for the production of TV series¹³. This is exactly what should be remedied by the proposed new aid measures which are intended to favour the co-financed production over the other production methods.

3.4 *The support measures for TV production*

The support measures for TV series production, as laid down in chapter 6 of the regulation, resembles the authorised production support for feature films¹⁴, except that the producer is required to make an own contribution of 50% of the production costs¹⁵ (instead of 25% for feature films). However, as confirmed by the Norwegian authorities to the EFTA Surveillance Authority, for the calculation of the State aid, the Norwegian Film Fund will not take the contribution of the broadcaster into account, in order to avoid any indirect subsidisation of the broadcaster.

The main features of the new support mechanism are:

- Support will be given only to independent Norwegian audiovisual producers (as defined in section 1-3 of the regulation, i.e. including companies registered in a country which is a party to the EEA Agreement).
- Support will only be given to TV series produced in the Norwegian or Sami language.
- Support should be given in the form of grants.
- The projects will be assessed on the basis of artistic, production-related, financial, technical and market-related criteria (section 6-1, second paragraph of the regulation). The assessment will be – as for feature films – carried out on an individual project basis (“selective aid”).
- The production company’s funding must constitute at least 50% of the production’s approved budget. In special cases the Norwegian Film Fund may set a lower proportion of equity funding for documentaries and productions for children and young people (section 6-1, third paragraph of the regulation). For these projects, support can be granted for up to 100% of the eligible costs.

¹² In 2002, private broadcasters commissioned almost 91 % of the total Norwegian commissioned productions, whereas NRK only commissioned around 9%.

¹³ The Norwegian authorities point out only one case for which co-financing has been used so far and which they consider a successful example. One of the national commercial broadcasters has recently substantially invested in a producer initiated project. The project would have been too costly for the television company to fund on its own. However, their investment is as significant as in any other television project they would have commissioned. Due to the independent producer’s development of the project concept, the project has obtained additional financing from Norwegian, Scandinavian and European funds, and from a major Scandinavian distributor.

¹⁴ For more details, see Authority’s decision of 20 February 2002.

¹⁵ As will be explained later, in the foreseen model of co-financing the broadcaster also pays some contribution which is not open to State support.

- There is a general ceiling on cumulated public support set at NOK 30 million.

The expected support for television series, is expected by the Norwegian Film Fund to be at around NOK 35 million in 2003 (10-15% of the budgetary allocation to Norwegian Film Fund).

According to section 1-6 of the regulation, production support for TV series will be *repayable* when a TV series generates net revenues. The Norwegian Government specified that the repayment obligation in section 1-6 might only have limited impact. Sources of revenue, which could trigger off the repayment of the aid, would be revenues from domestic videos, DVD and soundtrack sales, foreign broadcasting rights, derived exploitation rights, foreign video, soundtrack sales and DVD distribution.

According to the Norwegian authorities, the extension of the present aid scheme to the production of TV series should allow for a greater participation of the independent producer. While it is expected that commissioning will continue to be the key operative paradigm, the measure is intended to encourage more co-financed projects and stimulate a fruitful, well-balanced interplay between the independent producer and the broadcaster. The Norwegian authorities stress that the European Commission initiatives in the audiovisual field, i.e. the MEDIA programme, follow the same objectives and promote cooperation between broadcasters and independent producers.

In light of these objectives, the Norwegian authorities clarified to the EFTA Surveillance Authority the following criteria for assessing individual applications for support:

- Given the fact that support is given to independent producers only, *in-house production by broadcasters* is excluded from the scheme.
- Norwegian Film Fund will not grant aid to *commissioned work*, since here the production is paid fully by the TV stations, in most cases on a straight work-for-hire basis.
- As for *co-financing*, the Norwegian Film Fund will be instructed to ensure that the support measure does not – directly or indirectly – subsidise broadcasters. In order to ensure that the aid recipient is the independent producer, the level of investment from the broadcaster must not be below what may be deemed the standard contribution for an ordinary in-house production or commissioning, which does not amount to the quality productions fulfilling cultural criteria envisaged by the support scheme. Should the investment fall short of normal levels, the project will not qualify for the support.

Norwegian Film Fund has internal expertise in all fields of production related to its remit, including expertise on applied television production. The independent television series production market in Norway consists of few players and is consequently relatively transparent. This makes it feasible for the Film Fund's staff to monitor the development of the business, including the level of financial contribution, investment and/or participation that should be expected from the television companies in each individual project. Precedents have developed in terms of investment levels and other resource allocation, and the Norwegian

Film Fund does not foresee any difficulties in selecting projects within the objectives of the Regulations.

4. *Support for interactive production*

Chapter 7 of the regulation deals with the proposed support measures for the *development* of interactive production.

4.1 Definition of “interactive production”

According to Section 1-3 of the regulation, the notion ‘interactive productions’ covers computer games and other interactive productions for digital distribution, which tell a story with moving pictures.

The extension of the aid scheme intends to cover new digital distribution forms.

4.2 The market for interactive production

For a general description of the European and Nordic market for digital games, the Norwegian authorities refer to a report compiled by Media Desk Denmark¹⁶. Media Desk Denmark is one of the information offices of the MEDIA Programme of the European Union. MEDIA is a 5 year programme of the European Union to strengthen the competitiveness of the European film, TV and new media industries and to increase international circulation of European audiovisual product.

The report finds that the *global leisure software industry* is growing fast and is estimated to have worldwide revenues of \$ 16,9 billion in 2003. The European market for leisure software was worth \$ 5,6 billion in 2002, compared to \$ 7,5 billion in the United States and \$ 2,4 billion in Japan. There are predictions that in the future the annual games sales might reach \$ 43 billion globally by 2006.

The *Nordic* software leisure market¹⁷ (Denmark, Finland, Norway and Sweden) accounted for €476 million in 2002 in overall value terms, with a predicted growth to € 545 million in 2006¹⁸. The market is dominated by three international key players Sony (Play Station), Nintendo (GameCube) and Microsoft (Xbox).

The Norwegian authorities confirm the finding of dominance of international products for the *Norwegian* interactive leisure software market, which leaves only limited possibilities for Norwegian products. Of the 20 leading videogame publishers worldwide 8 are Japanese, 6 US and one a French-American company. When it comes to sales of interactive leisure software, the Norwegian authorities submit the following figures for 2001 and 2002, which demonstrate the absence of any Norwegian production in this market and the dominance of international productions.

¹⁶ Media Desk Denmark “Digital Games – A Danish Perspective”, Copenhagen 20 May 2003 (Digital Games Report).

¹⁷ According to the Media Desk Denmark Report, “interactive leisure software” refers to both games playable on dedicated hardware (consoles) and PCs, in addition to edutainment, but not reference such as encyclopaedias on CD and DVD ROM. Online and mobile gaming is not included either.

¹⁸ Digital Games Report, p. 6 with reference to Source Interactive Leisure Software Global market assessment and forecast to 2005, Screendigest, March 2003.

Sales of interactive leisure software in Norway (turnover in NOK)¹⁹

Type of games software	2001	2002
Sony PlayStation	53.730.743	13.27.181
Sony Play Station 2	75.447.681	148.093.336
Nintendo N 64	18.575.674	2.502.240
Nintendo Gameboy	53.533.433	36.146.818
Nintendo Gamecube	-	32.315.630
Microsoft Xbox	-	17.729.165
PC Games	138.781.830	95.304.155
Total	340.069.361	345.363.525

The Norwegian authorities observe that so far, many of the games are action-packed, highly commercial and sometimes violent. The strong international competition so far, has left little room for Norwegian quality productions in Norwegian or Sami language, and based on Norwegian culture, mores, settings and codes.

There are no indications that this situation will be changed without supporting measures. *Firstly*, the Norwegian authorities state that with 4,5 million inhabitants the Norwegian market is too small to sustain quality productions in Norwegian or Sami language based on Norwegian culture, stories, mores and settings. The Norwegian authorities in this respect relate to the finding made in the Media Desk report with regard to Denmark: there is a very small home market, no clear industry structure and very little risk money and support available.

Secondly, as described in the Media Desk Report, production costs increase and can range from € 75,000 to € 3 million. The increasing production costs are also leading to higher development costs and it becomes increasingly difficult for developers to create project ideas that are not mainstream and leading to a guaranteed income for the publisher. This will become clear from a description of the production process below.

4.3 The production process for a digital game

While it is clear that production processes vary for each individual project, some basic features can be identified which *normally* occur in the production process.

As to the persons/companies involved,²⁰ the process of creating and marketing a computer game is carried out by the game developer, the publisher, the distributor and the retailer. The game *developer's* activities consist of creating the game concept, the prototype, the production of the game, including design and programming. Often this work is done by development studios which employ from 5 to 200 employees. The *publisher's* work is to identify suitable titles, provide production funds and market the titles towards distributors, retailers and the end user. *Distributors* provide the link between the producer and the retail trade. Distribution is often centralised by global publishing companies. *Retailers* buy games from distributors and resell to the end consumer.

¹⁹ Source Norwegian Games and Multimedia Association.

²⁰ The following description is taken from Digital Games Report, p. 8-10.

As to the production process, the following steps can be identified²¹:

Idea Stage <ul style="list-style-type: none"> - Establishing graphical style - Gameplay sketch, - Basic storyline
Prototyping/creating 1st demo <ul style="list-style-type: none"> - Finishing design document - Contacting a publisher
Preproduction <ul style="list-style-type: none"> - Maturing technology - Experimentation with gameplay and User Interface
Production <ul style="list-style-type: none"> - Content creation (graphics, sound, scripts)
Crunch/debugging period <ul style="list-style-type: none"> - Putting everything together - Fixing final errors - Quality assurance
Release / distribution /support
Follow-up <ul style="list-style-type: none"> - Patches - Press
Total = 33 months

The idea stage ranges normally within a time frame from 3-6 months.

As already indicated, it is the publisher who is mainly responsible for the financing of the project and acts as the funding source for the development of the project after a given stage has been reached. In practice, the developer develops the idea, the gameplay sketch and the basic storyline for the game. He funds this development on *his own account* and *at his own risk* until he has reached a stage where he can show a working tech demo or a full prototype to the publisher. However, very often, the publisher already pays for the development of a prototype. Once the publisher has approved a work tech demo (or a prototype), he sets up a contract with the developer, which foresees remuneration in two components: an advance on royalties and proportionate remuneration depending on success. Royalties are often recoupable, meaning that the developer will not receive royalties until the publisher has recouped its advance.

However, if the developer does not find a publisher to take over the financing of the project, the costs involved in the development of the work tech demo or the prototype are sunk costs for the developer. This puts pressure on the developers to develop ideas and concepts which will “sell”. This will often lead to the development of “safe” or mainstream concepts, which are marketable, but often lack fresh content. For example many developers strive for producing games from successful books or films.

The increase of production and development costs over the last ten years reinforces this trend, as publishers are increasingly reluctant to invest money in projects which are of limited market potential. The production costs and development costs over the last ten years can be taken from the table below.

²¹ Source: Digital Games Report, page 11, referring to Janos Flösser, CEO, IO Interactive. Presentation, Louiz, Copenhagen, 26 November 2002.

Increasing Development costs

	10 yrs ago	Now
Concept	Negligible	Still low
Prototype/Game design	20,000 euro	400,000 euro
Production	150,000 euro	3-6 million euro
Back-end royalties	common	Rarer

Source: Bob Hopkins, Wise Monkey presentation, MEDIA Desk Denmark, Nov. 2002 as referred to in Digital Games Report, page. 22.

As the Norwegian authorities point out, the necessity of securing financing and avoiding sunk costs as well as the increasing trend of higher development costs, makes it less attractive for developers to develop Norwegian quality productions which would – due to the language (Norwegian or Sami) - only be of interest to a minority market. In this respect, it should be borne in mind that export possibilities for Norwegian language productions are also very limited.

4.4 The proposed support measures

To ensure a better supply of alternative products with Norwegian language and content, the Norwegian Government suggests a pilot project with support to project *development* for interactive products.

As stated in the budget proposal, *“the market for computer games is growing, and the development of new products is dominated by big international companies. The products are mainly orientated towards children and young people. There is a need for alternatives to the often violent and action-packed entertainment that young people meet through these games. To ensure a better supply of alternative products with Norwegian language and content, we suggest a pilot project with support to project development for interactive products.”* The details are laid down in chapter 7 of the regulation:

The support measures have the following characteristics:

- Support will be given only for project *development* of interactive productions and not for the production of a computer game or other interactive production. In the vast majority of cases, the support of Norwegian Film Fund will not even extend to the development of a prototype.
- The support is directed to non-linear²² interactive productions, but is neutral towards the platform or format. Products may be later used on the Internet, digital television, CD-ROM, DVD-ROM, Hybrid DVD, game consoles, etc.
- Support will be given to audio-visual producers for the development of concepts for interactive productions
- Support will only be given to project development in the Norwegian or Sami language.
- Support should be given in the form of grants (in two instalments).
- Applications must be made on a project-by-project basis. The assessment will be carried out on an individual project basis (“selective aid”). The assessment will be

²² Non-linear interactive production is understood in the sense that the project which is considered for support, should contain an underlying story or a basic narrative structure. This entails that a basic narrative should exist consisting of a large number of alternative narrative paths which the end-user may manipulate to create a non-linear narrative (a, b, a, c, d, e, d, e) instead of the linear narrative employed by creators of for instance feature films (a, b, c, d, e ...).

made on the basis of artistic, production-related, financial, technical and market-related criteria (section 6-1, second paragraph of the regulation).

- The production company's funding must constitute at least 25% of the production's approved budget.

A professional consultant will closely monitor the project.

As to the projects which will receive support, the Norwegian authorities point out that the support scheme is directed towards productions with restricted market potential and budgets, especially products for children and young people. Only such projects originating in the Norwegian (or Sami) language should be supported, based on Norwegian stories, values, settings and cultural codes. Support will only be given to qualified producers with a track record, who can document plans for further financing and production subsequent to the phase of development supported through the new fund, and who can guarantee the delivery of a pilot or prototype at the end of the development phase.

Support should *not* be granted to

- productions containing pornography or excessive violence,
- encyclopaedias or similar manuals,
- productions that are primarily educational or instructional,
- productions marketed primarily to support or enhance a commercial product,
- products marketed only for use on the current generation of mobile phones, and
- versions of already produced international products.

Beneficiaries will be developers who must be recorded as an audiovisual company or similar in the national register for business enterprises. Experience shows that very often developers are small SMEs with two or three employees, or even one-man operations.

According to the estimates of Norwegian Film Fund, support for interactive production will be about NOK 3 million in 2003 (less than 2% of the budgetary allocation to Norwegian Film Fund). There is a budgetary proposal to increase the support for 2004 from NOK 3 million to 8 million. The Norwegian authorities state that the support of each project will normally be below the de-minimis limit.

II. Appreciation

1. Procedural requirements

Pursuant to Article 1 (3) in Part I of Protocol 3 to the Surveillance and Court Agreement, "*the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid...The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision*".

By submitting the notification of the aid measure with letter of the Norwegian Mission to the European Union dated 7 April 2003, the Norwegian authorities have

complied with the notification requirement. The regulations will enter into force subsequent to the Authority's authorisation. No support will be paid out before that date. The Authority can therefore conclude that the Norwegian Government has respected its obligations pursuant to Article 1 (3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

2. The presence of State aid

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

Article 61(1) of the EEA Agreement reads as follows:

“Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”

2.1 Advantage

Firstly, the measures must confer on the producers of TV series and of interactive productions, advantages that relieve them of charges that are normally borne from their budget. The aid gives undertakings eligible under the mechanisms, i.e. independent audiovisual producers for TV series productions and developers of ideas and concepts for computer games and interactive productions, a financial benefit they would not have enjoyed in the normal course of business. It thus strengthens the financial position of the eligible audiovisual production company compared with other undertakings engaged in film production within the EEA.

2.2. State resources

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 support measures for TV series production and interactive production, will be financed by the Norsk Film Fund. This fund will receive State budgetary allocations for the purpose of granting subsidies in relation to film production and film-related activities (cf. St.prp.nr.1 (2000-2001) Kulturdepartementet, chapter 7, p.17 and St.prp.nr.1 (2002-2003) Kultur- og Kirke departementet, p.135-136). It can therefore be concluded that film support is granted by the State.

2.3 Selectivity

The measure must be specific or selective in that it favours *“certain undertakings or the production of certain goods”*. The new support measures favour independent audiovisual producers for the production of TV series and ideas for interactive productions.

2.4 Distortion of competition and effect on trade between the Contracting Parties

State aid to specific undertakings is regarded as distorting competition and affecting trade between the Contracting Parties, if the recipient firm carries on an economic

activity involving trade between the Contracting Parties. TV series and interactive productions may be produced in different alternative locations within the EEA. They are subsequently traded between the Contracting Parties to the EEA Agreement and may compete to attract audience and users. Production aid (including pre-production aid for project development for interactive production) may therefore alter the competition existing between different locations for the realisation of a TV series or interactive production, as well as it may influence the trading conditions for their commercialisation. Therefore, the proposed aid can be considered as distorting competition and affecting trade between the Contracting Parties.

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

3.1 The support for the production of TV series

3.1.1. Introduction to the legal framework conditions

With the Maastricht Treaty, a cultural derogation was added to the State aid rules of the EC Treaty. This cultural exemption under Article 92 (3)(d) of the EC Treaty (now Article 87 (3)(d) EC) provides that the EC Commission may consider compatible with the common market “*aid to promote culture and heritage conservation, where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest*”.

It is on this legal basis that the EC Commission has assessed and approved film support schemes in the EC Member States. In its decision of 3 June 1998 on the French film support programme, the EC Commission sets out a series of specific criteria on the basis of which it intended to assess State aid to film and TV production under the culture derogation of Article 87 (3)(d) EC. Following the adoption of this decision, the EC Commission issued similar decisions on other aid schemes in support of the film industry²³. Some of these decisions related explicitly to TV production²⁴.

The EEA Agreement does not contain a “cultural exemption” similar to Article 87 (3)(d) EC. Nevertheless, the Authority considers that, in line with its previous practice²⁵, film support measures may be approved on cultural grounds on the basis of Article 61 (3)(c) of the EEA Agreement. In its assessment, the Authority will apply criteria similar to those applied by the EC Commission on the basis of Article 92 (3)(d) of the EC Treaty (now Article 87 (3)(d) EC) provided that this approach does not deviate from its previous practice under Article 92 (3)(c) of the EC Treaty (now Article 87 (3)(c) EC) and provided that the criteria developed by the EC Commission under Article 87 (3)(d) EC are sufficiently taken into consideration.

²³ So far, the EC Commission approved film support schemes in France (State aid N 3/98), Ireland (State aid NN 49/97 and N 357/99), Germany (State aid N 4/98 and film support measures by various German *Länder*: e.g. N 439/2001, N 440/2001, N 693/2001, N 701/2001, N 727/2001 and N 782/01), The Netherlands (State aid N 486/97), Sweden (State aid N 748/99), Denmark (N 486/2001), Finland (N 777/2001) and regional film support measures in Spain (N 698/2001).

²⁴ State aid N 237/2000 (Ireland), NN 49/97 (Ireland) and N 357/99 (Ireland), N 439/2001 (Germany), N 681/2002 (Belgium).

²⁵ Authority’s Decision of 18 December 2000 regarding the Act on Temporary Reimbursements in respect of Film Making in Iceland and Authority’s Decision of 20 February 2002 regarding support to film production and film related activities in Norway.

3.1.2 Article 61 (3)(c) EEA Agreement

According to Article 61(3)(c) of the EEA Agreement “...aid to facilitate the development of certain economic activities or of certain economic areas...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 relieving a company of costs, which should normally be borne by it, is, in principle, incompatible with the functioning of the EEA Agreement²⁶. 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.

In its Communication on cinema and other audiovisual work²⁷, the European Commission has established criteria for its assessment of cinema and TV productions under Article 87 (3) (d) EC. According to the Communication, the Commission verifies:

- “...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 provisions of the EC Treaty in fields other than State aid”);
- “...whether the scheme fulfils the specific compatibility criteria for aid, set out by the Commission in its 1998 decision on the French automatic aid scheme”.²⁸

In the Authority’s view these criteria are equally relevant for the assessment of the present case.

a. Respect of the general legality principle

In the Commission’s Communication on cinema and other audiovisual means, the EC Commission stated that it would need to verify that “...the eligibility conditions of the State aid schemes do not contain clauses contrary to the EC Treaty provisions in fields other than State aids. The Commission must ensure, *inter alia*, that the EC Treaty principles prohibiting discrimination on the grounds of nationality, freedom of establishment, free movement of goods and freedom to provide services have been respected (Articles 12, 28, 30, 39, 43, 48 and 49 EC)....”

Compliance with these principles, which are mirrored in the EEA Agreement, requires, *inter alia*, that aid schemes must not reserve the aid for nationals exclusively or require beneficiaries to have the status of national undertaking established under national commercial law. The Authority was – as already expressed in its Decision No 32/02/COL of 20 February 2002 - satisfied that the Norwegian regulation contains a provision clarifying that foreign production companies, established in a country which is a Contracting Party to the EEA Agreement, are regarded/treated as Norwegian film producers for the purpose of this regulation. This means that foreign producers may apply for support under the Norwegian film support mechanisms, provided the film is

²⁶ Judgment of the Court of First Instance, Case T-459/93 *Siemens SA v. Commission* [1995] ECR II-1675.

²⁷ COM (2001) 534 final, 26.09.2001, OJ C 43 16.2. 2002, p.6.

²⁸ COM (2001) 534 final, 26.09.2001, point 2.3.

shot in the Norwegian or Sami language. This condition is not in conflict with the basic principles of the EEA Agreement, but reflects a justified linguistic and cultural concern. Therefore, the Authority concluded that the film support mechanisms respected the general legality principle.

b. Specific compatibility criteria

In the “French” decision, the European Commission, developed a number of requirements which need to be fulfilled in order for the aid to be permissible under the cultural exemption under Article 87 (3) (d) EC:

(1) Cultural content of eligible film projects

Firstly, the support must be directed to a cultural product, which means that the cultural content of eligible TV series must be ensured, in order to avoid that TV series not contributing to culture, and of a pure commercial character, receive State support. The cultural content must be determined according to identifiable national criteria.

The Authority observes that the support mechanisms, as such, pursue the objective of promoting Norwegian quality films in Norwegian or Sami language and that under the conditions of the mechanisms, support is subject to appraisal by the Norwegian Film Fund based on artistic, economic, technical and market related criteria. As far as productions for children and documentaries are concerned, it is understood that these two categories, too, must fulfil a cultural purpose (see below), which is equally ensured by the individual assessment made by Norwegian Film Fund.

(2) Permissible aid intensities

As established in the “French” case the aid intensity must be in general limited to 50%, with the exception of difficult and low budget films, having an aim to stimulate normal commercial initiatives inherent to a market economy, and to avoid a bidding contest between Member States. The Authority is satisfied that the support scheme for TV series requires the producer to contribute 50% of the production costs and meets this requirement.

The Norwegian authorities point out that in exceptional cases, derogations might be necessary as far as documentaries and productions aimed at children and youth are concerned. They state that these types of production require substantial resources to be able to reach a level of artistic ambition and *cultural value* to correspond to national policy objectives. Aid intensities might be up to 100% of production costs.

The Commission has, however, accepted aid intensities up to 100% for certain exceptional cases, where the realisation of the project was difficult, but justified, on cultural grounds²⁹. In addition, as the Authority has found in its Decision No 32/02/COL of 20 February 2002, and in line with the above mentioned EC Commission Communication on cinema and other audiovisual means, it is possible to show more flexibility and “*accept aid intensities higher than 50% where proven to be necessary in cases other than for difficult and low budget films...*” in view of the

²⁹ N 325/2002 (Spain).

comparatively limited geographic extension of certain languages and cultures, and given the limited circulation of those cultural products with the EC and world market.

The Authority's decision on the film support mechanism, found that the Norwegian audiovisual market – given its small size and without any relevant export possibilities – offered only limited market potential for Norwegian films, which justified the need for higher aid intensities. As it has been shown above (see I 3.2), the situation is not any better for the production of Norwegian TV series which acquire only limited market shares and are hardly exported. Given the limited geographic extension of the Norwegian and even more the Sami language, and taking into consideration that higher aid intensities up to 100% are further limited to the exceptional category of TV series whose realisation is difficult and requires a higher budget, these higher aid intensities are acceptable.

(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 Norwegian film support mechanisms.

(4) *20% requirement*

According to the Authority's Decision No 32/02/COL of 20 February 2002³⁰, the producer must be free to spend at least 20% of the film budget in other Member States, which favours exchanges within the European Union; 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 TV series does not contain any territory-related criteria linked to the realisation in Norway of a particular proportion of the production work. The Authority therefore concludes that the proposed TV series support mechanism respects 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.

3.2 Support for development of interactive production

3.2.1 The cultural content

The Norwegian authorities state that the proposed support measures are aimed at a cultural product and that – in particular for productions aimed at children and young people - quality productions with Norwegian content and language should be developed. The Authority has accepted (see I 3.1.1), that while the EEA Agreement does not contain a cultural exemption corresponding to Article 87 (3) (d) EC, it will assess the possibility of a cultural derogation from the general prohibition on State aid under Article 61 (3) (c) of the EEA Agreement, taking the Commission's previous practice under Article 87 (3) (c) EC into account as well as the criteria developed under Article 87 (3) d EC.

³⁰ See also the criteria developed by the European Commission in the “French case”, N 3/98.

In this respect, the Authority finds that the competence to define the cultural product is left to the EFTA State³¹ and that the EFTA Surveillance Authority does not pronounce a view on the classification of an activity as “cultural”. However, certain guarantees must be provided by the EFTA State to ensure the cultural nature of the product, in order to avoid the subsidisation of purely commercial productions (like e.g. commercials) which do not contribute to the defined notion of culture³². The EFTA State must consequently develop verifiable national criteria for the assessment of whether the support aims at a cultural product.

As an exception to the general prohibition of State aid, such an exemption must be interpreted strictly³³ and the cultural needs of a State must be distinguished from other needs, i.e. democratic or educational, which a society follows. This applies in particular to those cases, where the State aid measure concerns products which do not belong to a category *traditionally* considered as cultural (e.g. theatre, film, etc.).

The audiovisual sector, which the European Union has accepted as being of great importance for the cultural diversity and the traditions and histories of States³⁴, is undergoing changes resulting from an increased use of new (digital) technology. The introduction of new digital distribution forms introduces possibilities for an increased use of interactive media content, which might also express linguistic and cultural diversity via the media of computers, internet and mobile communication services³⁵. Traditional forms of cultural expression might, in the future translate, into these new forms of distribution. The EFTA Surveillance Authority therefore concludes that it is not possible to *per se* deny aid on cultural grounds for productions which fall outside well established categories.

However, when it comes to computer games there are many examples – confirmed by the description of the software market in Norway by the Norwegian authorities – which seem purely to fulfil an entertainment purpose and appear to be purely commercial in character. The EFTA State must be therefore be able to demonstrate to the EFTA Surveillance Authority that it applies criteria which sufficiently enable the State to ensure that, within the category of interactive productions, only cultural products will receive support. The EFTA Surveillance Authority has consequently asked Norway to submit the list of criteria which Norway intends to apply for verifying, in particular, the cultural content of the games, and further demonstrate, by way of a negative list, which products will be excluded from support, see I 4.4. above.

The Authority was satisfied that the Norwegian Film Fund would only support project development ideas based on Norwegian and Sami language. This linguistic criterion

³¹ See State aid N 727/2001 (Germany), State aid N 767/2001 (Germany), State aid N 746/2001 (Netherlands), State aid N 681/2002 (Belgium).

³² See for example State aid N 237/2000 (Ireland), State aid NN49/1997 and State aid N357/99 (Ireland).

³³ NN 70/1998 (Germany). See also the Commission’s on the application of State aid rules to public service broadcasting, OJ C 320, 15.11.2001, p. 5, point 26.

³⁴ Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works, OJ C 43, 16.2.2002, p. 6., Council Resolution of 12 February 2001 on national aid to the film and audiovisual industries emphasises that the audiovisual industry is a cultural industry par excellence, OJ C 73, 6.3.2001, p.3.

³⁵ Council Resolution of 19 December 2002 on interactive media content in Europe, O.J. C 13, 18.1.2003, p. 8.

reflects a cultural concern in an environment which is characterised by the predominance of international productions, and which leaves little room for languages with a more limited marketing potential. The definition of eligible interactive productions and computer games further provides that the products must ‘tell stories with moving images’. The story-telling aspect should ensure that there is a basic narrative which can be altered by the user by choosing from different alternatives – reflecting the character of a game or other interactive production. The aspect of story-telling (which is also the basic idea for TV and cinema films) can serve as an additional means to ensure the cultural content of the supported project. The Norwegian authorities point out that the project development idea must be based on Norwegian story-telling traditions, cultural codes and mores.

The submitted negative list by the Norwegian authorities expressly prohibits support of ideas for productions that are marketed primarily to support or enhance a commercial product. In order to ensure that new cultural content is developed, simple reference material like encyclopaedias and manuals are excluded from support as are versions of already produced international products.

It should be further stressed that the support is “*selective*” which means that support will be only granted after scrutiny of each *individual* project, based on its own merits, and after verifying for each project development idea, that the cultural content is ensured. Further, the project’s artistic merits, production-related, economical and technical aspects will be considered and it will be closely monitored by a professional consultant with experience in that field. Aid will only be given to applicants with a track record. All this should ensure that the project in question contributes to the expression of Norwegian culture and creativity. The Authority therefore concludes that the criteria applied by the Norwegian Film Fund sufficiently enable Norway to ensure that the individual project contributes to the Norwegian culture.

3.2.3. Necessity and proportionality of the aid

In this respect the Authority notes that Norway is not proposing the support of computer games or interactive productions which will be financed by the publisher, but only the *early* development stages of *project ideas* for such productions which for the developer increasingly prove to be sunk costs.

The reason is that in a market in which a developer bears the whole financial risk for ideas for which, in the end, he might not be able to find a publisher, and which is characterised by limited linguistic and cultural extension, it is difficult for the developer to market ideas to publishers which only have limited potential. In view of the developer’s need to find a publisher who would compensate him for his development costs, a developer will – as it has been demonstrated by the market survey done by Media Desk Denmark – rather opt for marketable ideas than taking the risk of spending money on cultural projects in Norwegian or Sami language which might not find a publisher easily. This trend, as shown by the Media Desk Denmark report, is increasing, with a tendency of higher development costs which makes publishers increasingly reluctant to invest in the early stages of the development cycle, leaving the developers to pick up the shortfall. While this support concerns only a phase of 3-6 months in the whole production process averaging around 33 months (see above, point 4.3) and on average does not cover more than 10% of the whole development and production costs of the project, it could be the only chance for a

cultural idea to reach the stage of a work tech demo or prototype (in those rare cases for which Norwegian Film Fund will support the prototype). If the opportunity to develop more quality productions with a cultural content is missed at the stage of development, it will not be realised during the production stage.

3.2.4. Legality principle

As it has been shown before, the regulation does not contain any provision which reserves the aid exclusively for nationals. The Authority is therefore satisfied that the general legality criterion is met.

3.2.5. Other criteria

In its Communication on certain legal aspects relating to cinematographic and other audiovisual work, the Commission has applied the general legality criteria and the four specific criteria from the “French” case to cinema and TV production³⁶.

Applied by analogy to the case of interactive production, the EFTA Surveillance Authority finds that these criteria are met. The Norwegian regulation does not contain any territorialisation criterion, nor does it allow for any aid supplements for specific activities. As regards the aid level of 75% of the development costs, this aid intensity is – in line with the Authority’s Decision No 32/02/COL of 20 February 2002 - acceptable as Norway is a market with limited geographic extension of language and culture, and given that Norwegian cultural products have a limited circulation within the EC and world market.

3.3. Other amendments to the existing support scheme

As regards other amendments to the existing film support scheme (reduction of level of instalments, see 2.2.6, requirement of a minimum audience of 100 000 visitors for 50/50 grants, see 2.2.5), the EFTA Surveillance Authority finds that these amendments do not change the compatibility assessment of the support scheme as authorised by the Authority in its Decision No 32/02/COL of 20 February 2002.

4. Conclusion

In view of the foregoing considerations, the Authority regards the proposed extensions of the film support regulation (“*Forskrift for tilskudd til filmformål*”), now regulation for support for audiovisual production (“*Forskrift for tilskudd til audiovisuelle produksjoner*”) to cover support mechanisms for TV series production and interactive production, 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 reminds the Norwegian Government of its obligation to submit annual reports regarding the implementation of the audiovisual support scheme in accordance with Chapter 32 of and Annex IV to the Authority’s State Aid Guidelines. According to Chapter 32 (7) of the State Aid Guidelines, Norway is further requested to provide

³⁶ See point 2.3 of the Communication.

information on the cultural character of those supported interactive productions which exceed the *de minimis* threshold as stipulated in Regulation 69/2001³⁷.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to raise objections to the proposed amendments to the existing regulation for film support ("*Forskrift for tilskudd til filmformål*"), now regulation for support for audiovisual production ("*Forskrift for tilskudd til audiovisuelle produksjoner*") in order to introduce new support mechanisms for TV series production and interactive productions and to amend the existing support scheme for film support, until 8 February 2007.
2. The Norwegian Government is requested to submit simplified annual reports regarding the implementation of the aid in accordance with Chapter 32 of the Authority's Procedural and Substantive Rules in the Field of State Aid. For those supported interactive productions, which exceed the *de minimis* threshold as stipulated in Regulation 69/2001, the reports shall also contain information on the extent to which the objective of the aid scheme to ensure the cultural character of the supported interactive productions is achieved.
3. This Decision is addressed to the Kingdom of Norway.

Done at Brussels, 29 October 2003

For the EFTA Surveillance Authority

Einar M. Bull
President

Hannes Hafstein
College Member

³⁷ Published in OJ L 10, 13.01.2001, p.30, incorporated into the EEA Agreement as point 1e) of Annex XV by Joint Committee Decision No 88/2002 (OJ L 266, 3.10.2002, p. 56 and EEA Supplement No 49, 3.10.2002, p. 42), e.i.f. 1.2.2003.