


EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION
Of 18 December 2000
Act on
Temporary Reimbursements in Respect of Film Making in Iceland,
Act No. 43/1999
(ICELAND)

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 Article 24 and Article 1 of Protocol 3 thereof,

HAVING REGARD TO the Procedural and Substantive Rules in the Field of State Aid³,

HAVING REGARD TO the Authority's decision of 4 June 1999, by which the Authority initiated proceedings in accordance with Article 1 (2) of Protocol 3 of the Surveillance and Court Agreement,

HAVING CALLED ON interested parties to submit their comments pursuant to those provisions⁴,

WHEREAS:

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

³ 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. 78/00/COL of 12 April 2000, not yet published; hereinafter referred to as State Aid Guidelines.

⁴ The opening decision was published in the Official Journal No. C 223/9 of 5 August 1999 (in the EU languages) and in the EEA Supplement No. 40/1 of 16 September 1999 (in the EFTA languages)

I. FACTS

Procedure

By letter from the Ministry of Industry and Commerce dated 10 March 1999, received and registered by the Authority on 7 April 1999 (Doc. No. 99-2531-A), the Icelandic authorities notified, pursuant to Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement, support measures in favour of film production in Iceland. As the Authority subsequently learned, the Government bill on these support measures had been adopted by the Icelandic Parliament on 11 March 1999 (Act No. 43/1999 on the “Temporary Repayment of Costs of Films produced in Iceland”; hereinafter referred to as the “Act”). By decision of 4 June 1999 (Dec. No. 114/99/COL), the Authority decided to initiate a formal investigation procedure regarding the aid measures provided for in the Act. In a letter of the same date, the Icelandic authorities were informed of the decision to open the formal investigation procedure and were requested to submit their comments within one month from receipt of the communication of that decision. After several extensions of the deadline, written comments were submitted by letter dated 15 October 1999, registered by the Authority on 26 October 1999 (Doc. No. 99-7966-A).

The opening decision was published in the Official Journal No. C 223/9 of 5 August 1999 (in the EU languages) and in the EEA Supplement No. 40/1 of 16 September 1999 (in the EFTA languages). Interested parties had the opportunity to submit their observations within one month from the publication in the Official Journal/EEA Supplement. No comments were submitted to the Authority.

In the opening decision, the Authority expressed doubts as to the compatibility of the aid measures under the Act with Article 61 (3)(c) of the EEA Agreement. These doubts were based on the grounds that the reimbursement of film production costs constituted operating aid not normally accepted by the Authority, and that the Act did not have the promotion of activities of specific cultural value as an objective. The Authority’s concerns were further explained in a letter dated 9 September 1999 to the Icelandic authorities (Doc. No. 99-6620-D). With reference to the practice of the EC Commission, and in particular the “French”⁵ and the “Irish”⁶ decisions, the Competition and State Aid Directorate of the Authority emphasised specifically that the scheme did not provide for mechanisms ensuring that eligible films were selected according to cultural criteria, and that by requiring film producers to spend the totality of production costs in Iceland, the scheme had the effect of restricting the provision of services within the EEA.

The issues of concern were discussed at bilateral meetings in Brussels on 30 June 1999 and 7 October 1999, at a package meeting on 26 November 1999 in Reykjavik, as well as at a multilateral meeting held on 21 March 2000 in Brussels. At this last meeting the consequences and implications of applying the criteria developed by the EC Commission for the assessment of film support schemes under Article 61 (3)(c) of the EEA Agreement were discussed with the EFTA States.

⁵ State aid No. 3/98 - France

⁶ State aid No. NN 49/97 and N 357/99 – Ireland; this decision can also be found on the internet: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/industrie/nn049-97.pdf

In a letter dated 24 July 2000 (Doc. No. 00-5245-D), the Authority expressed the view that, in the light of the criteria developed by the EC Commission with respect to film support schemes in the EC and of the written comments submitted by the Icelandic authorities, the aid measures provided for under the Act could not be exempted under Article 61 (3)(c) of the EEA Agreement, and were therefore considered to be incompatible with this Agreement. Against this background, the Authority called upon the Icelandic authorities to submit their comments within two months from the receipt of the said letter. In their response, the Icelandic authorities informed the Authority by fax of 8 September 2000, registered by the Authority on 14 September 2000 (Doc. No. 00-6356-A), that the Icelandic Government was in the process of initiating work on a bill of law, taking into account the concerns raised by the Authority regarding the compatibility of the Act under Article 61 (3)(c) of the EEA Agreement. In addition, the Icelandic Government confirmed that it refrained from applying the provisions of the law, as requested in the Authority's decision of 4 June 1999. A meeting was held on 11 October 2000 between the Icelandic authorities and representatives from the Authority's Competition and State Aid Directorate, on the occasion of which the amendments as envisaged by the Icelandic Government were discussed in more detail. At this meeting, the Icelandic authorities also confirmed that no payments had been made under the Act. The final draft of the bill amending the Act No. 43/1999 on "Temporary Reimbursement in Respect of Film Making in Iceland"⁷, was submitted to the Authority by letter of the Ministry of Finance dated 28 November 2000, registered by the Authority on 4 December 2000 (Doc. No. 00-8857-A).

Description of the aid measures under the bill amending Act No. 43/1999

According to Article 1 of the bill amending the Act on the "Temporary Reimbursements in Respect of Film Making in Iceland", No. 43/1999 (hereinafter referred to as the "proposed amending Act"), the objective of film support under the proposed amending Act is "*to enhance domestic culture and promote the history and nature of Iceland by temporarily supporting motion pictures and television programmes produced in Iceland.*"

Pursuant to Article 2 of the proposed amending Act, reimbursement is granted for a proportion of the production costs incurred in the production of films and television programmes in Iceland. This provision further clarifies that "*[w]hen more than 80% of the total production cost of a motion picture or television programme is incurred in Iceland, reimbursement shall be calculated from the total production cost incurred within the European Economic Area.*" Production costs refer to all costs incurred in Iceland deductible from the revenues of enterprises pursuant to the provisions of the Act on Income and Net Wealth Tax. Payments pertaining to employees and contractors are only to be included in the production costs if they are verifiably taxable in Iceland

Articles 3 and 4 of the proposed amending Act refer to the application procedure and the establishment of a Committee responsible for the assessment of applications for reimbursement. The Committee shall take into consideration whether the motion

⁷ The Authority notes that the title of the bill amending Act No. 43/1999 is slightly different compared to title of the original Act No. 43/1999. However, the Act to be amended is obviously the same.

picture or television programme promotes Icelandic culture, and, as applicable, contains references to Icelandic history and nature. When assessing an application for reimbursement, the Committee may also ask for an expert opinion regarding the presumed artistic value of the relevant production.

The conditions for reimbursement are laid down in Article 4 of the proposed amending Act. These conditions include, in particular, the requirement that the production be suited for promoting Icelandic culture and the history and nature of Iceland, and that a specific company shall be established in Iceland for the production (a company is also considered to be established in Iceland, if a company registered in another Member State of the European Economic Area has an Icelandic branch or agency).

Article 5 of the proposed amending Act determines the permissible aid intensity under the scheme: *“The proportion of reimbursed production costs shall be 12% of the production cost pursuant to Art. 2.”* The Minister of Industry shall determine the reimbursement based on recommendation of the Committee pursuant to Article 3 of the proposed amending Act. Article 7 of the proposed amending Act ensures that *”[i]n the event that an applicant has received a grant from the Icelandic Film Fund for the production of the same motion picture or television programme, the grant shall be deducted from the amount that is considered domestic production cost. The total of a grant from the Icelandic Film Fund and a reimbursement pursuant to Art. 5 shall not exceed 50% of the total production costs of the same motion picture or television programme.”*

Pursuant to Article 8 of the proposed amending Act, *“the Minister of Industry shall issue a regulation on the implementation of this Act. It shall, inter alia, contain provisions on procedures for reimbursements as stipulated in this Act, the right of the Minister to defer reimbursements in excess of the amount allocated in the Government budget, conditions for reimbursements, applications, responses to applications and decisions on reimbursements.”*

In accordance with Article 9 of the proposed amending Act, the scheme shall enter into force immediately and shall cease to be effective on 31 December, 2006. Reimbursement requests that have been approved before that time shall remain valid.

II. APPRECIATION

Stand-still obligation

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. If it considers that any such plan is not compatible with the functioning of the EEA Agreement having regard to Article 61 of the EEA Agreement, it shall without delay initiate the procedure provided for in paragraph 2. The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision”.*

In the opening decision, the Authority considered the aid to be unlawful on procedural grounds since the Act had been notified late and implemented without awaiting a decision of the Authority. However, in the course of the proceedings the Icelandic authorities have confirmed that no aid had been paid out under the Act No. 43/1999.

The Authority can, therefore, conclude that the Icelandic authorities have respected the stand-still obligation under Article 1 (3) of Protocol 3 of the Surveillance and Court Agreement.

State aid within the meaning of Article 61 of the EEA Agreement

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 aid measures provided for under the proposed amending Act are financed through the State budget. The proposed amending Act grants film producers a financial benefit they would not have obtained in the normal course of business. Consequently, the aid strengthens the recipient's position compared with that of competing firms. In general, support measures will affect competition and trade between the Contracting Parties, provided that the recipient firm carries on an economic activity involving trade between the Contracting Parties. Film productions may be shot in different locations within the EEA. Furthermore, film productions are subsequently traded between the Contracting Parties and may compete between them to attract audiences. Consequently, production aid granted under the proposed amending Act may alter competition between different locations for the production of a film and may influence the trading conditions of films for their commercialisation. Therefore, the proposed amending Act on the temporary repayment of production costs contains aid within the meaning of Article 61 (1) of the EEA Agreement.

Compatibility of Aid Measures under Article 61 (3)(c) of the EEA Agreement

The Authority has examined whether the aid measures under the proposed amending Act may be approved on cultural grounds. It should be mentioned that, unlike in several other areas, the Authority has not adopted interpretative guidelines in the field of aid to film and television industries yet. Therefore, the assessment of the compatibility of aid to film producers has to be based directly on Article 61 of the EEA Agreement, interpreted in particular in the light of relevant EC Commission practice.

In its decision-making practice the EC Commission has historically adopted a favourable approach to aid for television programmes and film production. Aid schemes were considered compatible with the EC Treaty provided that the aid was necessary for and proportional to the promotion and/or the preservation of European

culture and was in accordance with the basic principles of the EC Treaty, such as non-discrimination and freedom to provide services.⁸

The EC Commission has recognised in various policy papers that the production and distribution of films and programmes plays a major role in European cultural identity. In its most recent paper “A strategy for the Community’s audio-visual policy in the digital age”⁹, the EC Commission recognised that, in the light of the special importance of this industry, the EC Commission defines the fundamental goals of the audio-visual policy as being “*to encourage the production and distribution of European works, by establishing a secure and stable legal framework to guarantee the freedom to provide audio-visual services on the one hand, and through appropriate support mechanisms on the other.*”¹⁰

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) EC¹¹) provides that the 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*”. This exemption is not included in the EEA Agreement. Nevertheless, the Authority considers that film support measures may be approved on cultural grounds on the basis of Article 61 (3)(c) of the EEA Agreement, to the extent that EC Commission decisions based on Article 92 (3)(d) of the EC Treaty (now Article 87 (3)(d) EC) do not deviate from its previous practice under Article 92 (3)(c) of the EC Treaty (now Article 87 (3)(c) EC). In this respect, the Authority would like to refer to the EC Commission’s decision regarding aid to film production in Ireland, where the EC Commission clarified that “*[i]t should be stressed that the introduction by the 1992 Treaty on European Union of Articles 151 (1) and 87(3)(d) did not necessarily reflect a change in the Commission’s policy towards the cultural sector because the considerations set out in the said Articles had previously been taken into account by the Commission when assessing the compatibility of aid to cultural activities*”.¹²

The Authority is aware that, in recent decisions regarding film support measures, the EC Commission has excluded the application of Article 87 (3)(c) EC (equivalent to Article 61 (3)(c) of the EEA Agreement) and based its approval on Article 87 (3)(d) EC. According to the EC Commission Article 87 (3)(c) EC was not applicable since the film support measures at issue constituted operating aid not normally allowed under this provision. Furthermore, film support measures would not have as their primary objective the development of an economic activity but rather the creation of a cultural product (film). In the Authority’s view, the EC Commission’s approach does

⁸ See First Report on the Consideration of Cultural Aspects in the European Community Action, COM (96) 160 final, 17.4.1996, published on the internet: <http://europa.eu.int/comm/dg10/culture/cult-asp/en/index.html>; see also EC Commission Decision 89/441/EEC of 21 December 1988 on aid granted by the Greek Government to the film industry for the production of Greek films, OJ L 208 of 20 July 1989, p. 38

⁹ COM (99) 657 of 14/12/99

¹⁰ Audio-visual Policy (quoted above), p. 8/9

¹¹ Citation according to “Note on the citation of articles of the Treaties in the publications of the Court of Justice and the Court of First Instance” (see: <http://curia.eu.int/en/jurisp/remnot.htm>).

¹² State aid No. NN 49/97 and N 357/99 – Ireland; this decision can also be found on the internet: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/industrie/nn049-97.pdf

not prevent the recourse to Article 61 (3)(c) of the EEA Agreement as a legal basis for the approval of film support measures in the EFTA States, provided that the criteria developed by the EC Commission under Article 87 (3)(d) EC are sufficiently taken into consideration.

Against this background, the Authority has examined whether the proposed amending Act can be approved under Article 61 (3)(c) of the 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 to be compatible with the EEA Agreement “*...where such aid does not adversely affect trading conditions to an extent contrary to the common interest*”.

According to EC Commission practice in the field of State support measures for the film industry¹³, operating aid to the film industry may be declared compatible provided that the following criteria are fulfilled:

- The cultural content of the film receiving aid must be ensured in some way,
- The aid intensity must not exceed 50% of the production costs,
- The producer must be free to spend at least 20% of the film budget in other EEA States without losing aid on this part of the production costs,
- The aid must satisfy the general principles regarding compatibility of State aid (necessity, proportionality and transparency) as well as the fundamental principles of the EEA Agreement.

The Authority is of the opinion that these criteria strike a balance between the aims of cultural creation and the development of audio visual industries on the one hand, and competition concerns on the other. They adapt the general conditions underlying Article 61 (3)(c) of the EEA Agreement, namely necessity and proportionality of the aid, to the specific circumstances and requirements in the field of film production.

The cultural content of the film receiving aid must be ensured

The Authority would like to emphasise that this criterion does not aim at restricting the EFTA States’ competence regarding cultural affairs, nor does it intend to determine what kind of film productions should be considered of cultural value under the national film support scheme. However, to be exempted from the general prohibition of operating aid on cultural grounds, and in light of the EC Commission’s practice requiring that the aid should be primarily aimed at promoting the creation of a film as a cultural product, rather than promoting the film industry as such, the Authority takes the view that the scheme must clearly pursue the objective of promoting the production of films, rather than the development of the film production-related industry. Furthermore, it must be designed in such a way that the promotion of culture is secured under the provisions of the aid scheme. This means that the national bodies responsible for awarding film support must assess the application for aid on artistic/cultural grounds. Furthermore, the requirement regarding the cultural content excludes aid to non-cultural productions, such as commercials.

¹³ State aid N 3/98 – France; State aid N 486/97 – Netherlands; State aid N 4/98 – Germany; State aid NN 49/97 and N 357/99 – Ireland; State aid N 748/99 - Sweden

In the course of the formal investigation procedure, the Authority had expressed concerns regarding various provisions of the Act adopted on 11 March 1999. In the Authority's view, these provisions were mainly aiming at supporting the film industry in Iceland by attracting foreign capital, without however placing sufficient emphasis on the selection of eligible films on cultural criteria. Under the proposed amending Act, it is now explicitly stated that the support measures pursue cultural objectives, such as to enhance domestic culture and promote the history and nature of Iceland. Furthermore, the applications for reimbursements of film production costs are assessed by a Committee under cultural criteria. The Authority is satisfied that these provisions ensure the appraisal of eligible film projects on quality and artistic grounds.

The aid intensity must not exceed 50% of the production costs

In order to strike a balance between the objectives of promoting film production and maintaining conditions of undistorted competition, it is appropriate to limit State support for individual productions. The respect of a maximum ceiling of aid for film production is necessary to stimulate normal commercial initiatives inherent in a market economy and to avoid a bidding contest between the Contracting Parties. Furthermore, the threshold of 50% of the production budget is also in line with thresholds set by other supra national film support mechanisms, such as aid provided through the EC programme MEDIA II (1996-2000)¹⁴ and the Council of Europe Eurimage Programme. Considering that, since 1998, all film support schemes approved by the EC Commission respect the maximum ceiling of 50% without exception¹⁵, and in order to ensure a level playing field between film producers within the EEA, the Authority is of the opinion that it is important to restrict the allowable aid intensity to 50% of the production budget.

The aid intensity fixed pursuant to Article 5 of the proposed amending Act, with a maximum support of 12% of the production costs, respects the 50% aid ceiling. Furthermore, cumulation rules inserted into Article 7 of the proposed amending Act ensure that, when the same film project receives aid from the Icelandic Film Fund, this amount should be deducted from the amount that is considered domestic production cost under the proposed amending Act. In no case can the cumulated aid granted to the same film exceed 50% of the total production budget.

The producer must be free to spend at least 20% of the film budget in other EEA States with the full benefit of the aid

Although the aid measure should be primarily aimed at promoting the production of a film as a cultural product, the Authority acknowledges that without a sufficiently well developed human and technical environment film producers will not be able to express their creativity. Therefore, and to the extent necessary to foster the continued

¹⁴ e.g. Article 3 of Council Decision 95/563/EC of 10 July 1995 on the implementation of a programme encouraging the development and distribution of European audio visual works; OJ L 321 of 30 December 1995

¹⁵ State aid N 3/98 – France; State aid N 486/97 – Netherlands; State aid N 4/98 – Germany; State aid NN 49/97 and N 357/99 – Ireland; State aid N 748/99 – Sweden

presence if not the development of a human and technical environment required for cultural creation in the EFTA State concerned, EFTA States are allowed to provide support to the film industry going beyond the support for the production of a particular film, by obliging film producers to spend part of their production budget in the aid awarding country. However, this possibility is not without limitations. In this respect, it would appear that certain purely technical services, which do not form part of the necessary cultural environment, should not be subject to such an obligation. Against this background, the EC Commission has developed the “80%/20%-rule”, which allows EC Member States to “territorialise” up to 80% of a total production budget in their country. This requirement implies that, when less than 80% of total production costs are spent in the aid awarding country, only production costs incurred in that country will be eligible for aid. If the ratio is 80% or higher, all costs incurred in the EEA must be eligible for aid.

Even where a film support scheme does not contain an explicit obligation for film producers to spend the total or part of the production budget in the aid awarding country other provisions, in particular those related to the calculation of the aid, may have the same effect. As regards the Act adopted on 11 March 1999, the Authority had taken the view that certain provisions (in particular Article 2 of the Act) might induce a film producer to spend a larger part of the production budget in Iceland than he would otherwise have contemplated. In this context, the “80%/20%-rule” requires that the amount of the reimbursement must be calculated on the basis of the total production costs irrespective of where these costs were incurred if the producer spends 80% or more of the total production budget in the country concerned. However, whenever film producers spend less than 80% of the production budget in Iceland, the interests of the other Contracting Parties to the EEA Agreement are considered to be sufficiently taken care of. In such cases, the amount of the reimbursement may be calculated on the basis of the costs incurred in Iceland.

Under the provisions of the proposed amending Act (see Article 2) reimbursement is granted for a proportion of the production costs incurred in the production of films and television programmes in Iceland. However, it is stressed that “[w]hen more than 80% of the total production cost of a motion picture or television programme is incurred in Iceland, reimbursement shall be calculated from the total production cost incurred within the European Economic Area.” This means that a film producer is free to spend up to 20% of the production budget outside Iceland without losing aid on this amount. On the other hand, where a producer spends less than 80% in Iceland, the aid will be calculated on the basis of the costs incurred in Iceland. This territorialisation of the aid is in accordance with the criteria established by the EC Commission in its practice regarding film support schemes in the EC. It further strikes a balance between the justified concern to provide support for the film industry in Iceland and concerns related to the freedom to provide services within the EEA. The Authority can, therefore, conclude that the provisions inserted in the proposed amending Act fully comply with the criteria set out above.

The aid must satisfy the general principles regarding compatibility of State aid (necessity, proportionality and transparency)

As to the necessity of the aid, it is common ground that film production in Europe requires substantial State support in order to ensure that Europe's own culture and creative capacity has the opportunity to be expressed. This support is required for ensuring the European presence in a market dominated by audio-visual products from outside the EEA. The fostering of audio-visual production by individual EFTA States allows the promotion of cultural diversity that would not, otherwise, have been possible.¹⁶ Without State support, it could be expected that due to limited markets and audiences for European films, and in particular those in languages not widely spoken in Europe, film producers would not be able to cover their production costs with revenues from the distribution of films in cinemas, television and video. It is widely recognised that market forces alone do not ensure the desired level of production. In light of these circumstances, the Icelandic film support scheme can be considered to be necessary.

Previous concerns regarding the proportionality of the aid have been dispelled under the proposed amending Act. Under the proposed provisions, the aid intensity no longer increases with the size of the film budget. Furthermore, the proposed amending Act has abolished the requirement of a minimum budget of ISK 80 million for film productions to be eligible under the aid scheme. With these amendments the film support scheme can be considered proportional to its objectives, namely to enhance Icelandic culture irrespective of the film production budget. Finally, the Authority notes that the aid scheme is limited in time to five years (until December 2006).

The aid must satisfy the fundamental principles of the EEA Agreement

Under the Act adopted on 11 March 1999, reimbursement was dependent upon the film producer having a fixed establishment in Iceland. The Authority regarded this requirement as constituting a restriction to the freedom to provide services which could not be justified on cultural grounds. Pursuant to Article 4 lit. c) of the proposed amending Act, film producers no longer have to be established in Iceland to be eligible under the scheme. For companies having their registered office within the EEA it is sufficient to have a branch or agency in Iceland. Furthermore, the territory-related provision for determining the amount of reimbursement has been limited to the extent required under the "80%/20%-rule". The Authority can, therefore, conclude that the provisions under the proposed amending Act are in compliance with the basic freedoms of the EEA Agreement.

Conclusions

The film support measures contained in the bill amending the Act on Temporary Reimbursements in Respect of Film Making in Iceland can be considered compatible with Article 61 (3)(c) of the EEA Agreement. Therefore, the Authority is in a position

¹⁶ This was most recently confirmed by the Report from the High Level Group on audio-visual policy http://europa.eu.int/comm/dg10/avpolicy/key_doc/hlg_en.html

to close the proceedings against the original Act No. 43/1999 initiated under Article 1 (2) of Protocol 3 of the Surveillance and Court Agreement. The Authority would, however, emphasise that this conclusion is based on the bill to amend Act No. 43/1999 as communicated to the Authority by letter of the Ministry of Finance dated 28 November 2000, registered by the Authority on 4 December 2000 (Doc. No. 00-8857-A). Amendments to this bill, which may affect the assessment of the aid measures under Article 61 (3)(c) of the EEA Agreement, are not covered by this decision. Such amendments would have to be notified to the Authority and could only be put into effect after the Authority has given its approval.

Finally, in order to allow the Authority to keep the application of the scheme under constant review, the Icelandic authorities are requested, pursuant to Chapter 32 of the Authority's State Aid Guidelines, to submit simplified annual reports regarding the implementation of this scheme in the form shown in Annex IV to the Authority's State Aid Guidelines. The Icelandic authorities are reminded that pursuant to point (5) of Chapter 32 of the Authority's State Aid Guidelines, “[f]or each scheme, the first report should be sent to the EFTA Surveillance Authority not later than six months after the end of the financial year in which the scheme was approved by the EFTA.”

Finally, in accordance with point (6) of Chapter 32 of the Authority's State Aid Guidelines, “Failure to comply with the obligation to provide the reports within the deadline may oblige the EFTA Surveillance Authority to initiate proceedings under Article 1 (2) of Protocol 3 to the Surveillance and Court Agreement in respect to the aid scheme in question”.

HAS ADOPTED THIS DECISION:

1. The aid measures provided for in the bill amending Act No. 43/1999 on “Temporary Reimbursements in Respect of Film Making in Iceland” are compatible with the EEA Agreement.
2. The formal investigation procedure against the original Act No. 43/1999 on “Temporary Repayment of Costs of Films produced in Iceland”, as adopted by the Icelandic Parliament on 11 March 1999, is closed.
3. The Icelandic authorities are 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 December 2000.

For the EFTA Surveillance Authority

Knut Almestad
President

Hannes Hafstein
College Member