

Case No: 60540
Event No: 299227
Dec. No.: 267/06/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 20 September 2006
regarding the proposed Liechtenstein Media Support Act
(Liechtenstein)

THE EFTA SURVEILLANCE AUTHORITY

HAVING REGARD TO the Agreement on the European Economic Area¹, in particular to Articles 61 to 63 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice², in particular to Article 24 thereof and Article 1 in Part I of Protocol 3 thereof,

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

WHEREAS:

I. FACTS

1. Procedure

By an electronic submission dated 21 August 2006 from the EEA Coordination Unit in Liechtenstein, the Liechtenstein authorities notified the EFTA Surveillance Authority (hereinafter 'the Authority') of an aid scheme under the new draft Media Support Act, which is meant to enter into force on 1 January 2007.

The submission was received and registered by the Authority on the same date (Event No. 384708).

Additional information from the Liechtenstein authorities was received and registered on 28 August 2006 (Event No. 385594).

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 3.9.1994, No 32, last amended on 19 April 2006, not yet published, hereinafter referred to as the 'Authority's State Aid Guidelines'.

2. Description of the former aid scheme

The notified draft Media Support Act replaces the existing aid scheme under the Liechtenstein Media Support Act of the year 2000, which had been authorised by the Authority in its decision 192/00/COL of 27 September 2000.

Under the previous aid scheme support measures were granted to defined media undertakings, individuals, initiatives, universities and other institutions to ensure an appropriate level of information on Liechtenstein events and to promote media diversity and pluralism. Aid was granted in three different forms:

Firstly, performance agreements could be concluded between the Government and media undertakings to provide information on activities of public authorities. The eligible media undertakings had to cover at least 15% of the Liechtenstein population. They were compensated for costs resulting from the information obligation laid down in the agreement.

Secondly, general media contributions could be granted for information activities that predominantly and continuously focused on events and issues of interest in Liechtenstein, as well as for training and research activities. The grant was not dependent on the media undertaking's financial situation, but rather on the quality of the information provided.

Lastly, extraordinary media contributions could be granted for infrastructure costs (technical equipment necessary for the dissemination of information about Liechtenstein events and issues).

All these aid forms will be repealed by the new draft Media Support Act (*Medienförderungsgesetz*)⁴, which establishes a system of indirect and direct support⁵. The features of the new draft Media Support Act will be described in some more detail below.

2.1 Objective of the aid scheme

The objective of the draft Media Support Act, as stipulated in section 3(2) thereof, is to preserve the pluralism of opinions, to promote journalistic-editorial quality as well as to facilitate the dissemination of opinion shaping media in Liechtenstein. As stated by the Liechtenstein authorities, the new scheme should contribute to the effective exercise of democratic rights as well as to the promotion of media diversity by establishing a wider variety of different independent media reporting on Liechtenstein topics. The aid will also cover cultural publications, which is however not the scheme's main objective.

⁴ See Government bill of 25 April 2006 (Bericht und Antrag der Regierung an den Landtag des Fürstentums Liechtenstein betreffend die Totalrevision des Medienförderungsgesetzes).

⁵ Although not directly comparable and having undergone serious amendments, the direct and indirect support measures under the notified draft Media Support Act, see section I.2.5 of this Decision, resemble the former ordinary media grants in their intention to support information activities which predominantly focus on events and issues of interest in Liechtenstein.

Section 3(1) of the draft Media Support Act stresses that in principle private media undertakings should finance their costs on a commercial basis and that State measures are only admissible if they are necessary to pursue the above objectives.

2.2 The media environment in Liechtenstein

The Liechtenstein authorities describe the media environment in Liechtenstein as follows: Given the smallness of the national market and the lack of demand for Liechtenstein information abroad, market forces only insufficiently provide information on Liechtenstein events and news. At present, Liechtenstein counts two daily newspapers, which report about Liechtenstein related issues on a daily basis (Liechtensteinisches Volksblatt and Liechtensteiner Vaterland). The only Liechtenstein television channel stopped operating in 2003 and the only radio station, Radio Liechtenstein, was nationalised in 2004.

According to the Liechtenstein authorities, foreign media undertakings do not provide Liechtenstein related information to a sufficient extent. The Liechtenstein authorities underline that the smallness of the market makes it very difficult to have a co-existence of various opinion shaping independent media (pluralism), which is however a necessary basis for the democratic process.

2.3 Legal basis for the support measure

The legal basis for the support measures are laid down in the draft Media Support Act. The details of the support is set out in sections 4 (eligibility for the support), 5 (types of support), 6 and 7 of the draft Media Support Act (maximum amounts for the direct and indirect media support respectively).

2.4 Eligibility

Contrary to the former Media Support Act, the support is now limited to media *undertakings* (and no longer covers e.g. political initiative or individual journalists), which produce a periodical medium.

The tightening of the eligibility criteria in comparison with the support under the existing Media Support Act should ensure that the state support is better focused, which was not always guaranteed with the formerly wide formulation of eligible recipients. As media undertakings have, according to the Liechtenstein authorities, a more direct influence on the opinion shaping, the support is limited to them. The aid is, however, granted regardless of the quality and specific opinion expressed. It should further be excluded that for the same journalistic product support is given to the journalist as well as to the media undertaking.

In order to be eligible, the media undertaking has to fulfil the following cumulative conditions, as set out in Article 4(1) of the draft Media Support Act.

It has to be a media undertaking which publishes a periodical medium:

a) Which permanently and to an important extent contains news, analyses, commentaries and background information on political subjects and events in Liechtenstein.

The criterion ‘permanently’ should ensure that no support is given to media, which deal with the required content only in single editions. The requirement that the media should to an important extent contain information on political subjects should be understood to be limited to Liechtenstein subjects and events, as this should foster the democratic opinion shaping process, which constitutes the justification for the state intervention.

b) Which constitutes an essential contribution to public opinion shaping in Liechtenstein.

c) Whose content is mainly distributed in journalistic-editorial form.

This criterion should exclude that content of contributions by other media will simply be reproduced.

d) Which is published at least 12 times per year.

For electronic media, this is calculated according to the first distribution of media content.

e) Of which the textual elaboration requires at least one full time worker.

For being considered as a full time worker, the employment relationship must cover more than 50% of the working time.

The support is excluded, see section 4(2) of the draft Media Support Act, if the medium

a) has more than 50% of advertising⁶,

b) mainly aims at a certain group of persons (employees, customers, experts, etc.),

c) includes mainly religious or radical ideological contents, or

d) already receives State support from other sources.

⁶ The German text speaks of “*entgeltliche Veröffentlichungen*”. This clause, which basically should exclude the support of publications for which a remuneration is received, has to be understood in a broad sense by comprising all content for whose publication directly or indirectly a remuneration is paid or another advantage granted.

Of several periodic media of the same media undertaking, which largely have the same content, only one can be considered for support. Several media undertakings of a media group are to be considered as one single media undertaking.

The scheme is also open to foreign media producers on a non-discriminatory basis, as long as they fulfil the eligibility requirements set out in the draft Media Support Act⁷.

2.5 Forms of support

The support is given in the form of direct and indirect support as laid down in section 5 of the draft Media Support Act. According to the Liechtenstein authorities, the aid is automatically accorded, if certain objective criteria, as stipulated in section 4 of the Media Support Act on eligibility, are fulfilled. However, the aid amount foreseen for each aid recipient can be proportionately shortened. Such a shortening will take place, when the Media Commission, as the authority granting the aid, realises that the total amount of all envisaged media support will exceed the annual amount of the budget.

According to section 5(1) of the draft Media Support Act, both forms of support are paid out retroactively for the previous year. By the retroactive payment, the Liechtenstein authorities would like to verify that the criteria for obtaining the aid (reporting on Liechtenstein events, etc.) have been met. They consider the retroactive payment a further quality guarantee for that only such aid will be paid out which has produced journalistic and editorial work of the kind the Media Support Act wishes to promote.

According to section 5(2) of the draft Media Support Act, the *direct media support* consists of a lump sum payment for the creation of journalistic editorial content, which an eligible media undertaking has undertaken for a medium in the meaning of section 4(1) of the draft Media Support Act (i.e. a medium reporting on Liechtenstein politics and events). The payment is linked to the percentage of personnel employed by the media undertaking for the creation of that journalistic-editorial content of the medium. According to section 6 of the draft Media Support Act, the support is limited to 30% of the standardised salary costs of those employees, which are involved in the journalistic-editorial content creation for a medium within the meaning of section 4(1) of the draft Media Support Act. In practice, this means that it will first be determined how many employees are employed for the relevant content creation of the respective medium. Then, the standardised labour costs of these employees are calculated on the basis of a monthly standard wage, decided upon by the Media Commission. A maximum of 30% of these standardised costs can be disbursed in form of direct media support. The Government proposal illustrates that the link to the wage costs is made on the conviction that it is the journalists' work, which influences the kind and quality of the medium. In addition, while not actually reimbursing the real costs, the calculation of the costs on the basis of the employed workers should achieve that the

⁷ The Liechtenstein authorities stress that a formulation on page 8 of the Government Bill which excludes foreign media without any reference to Liechtenstein topics should not be misunderstood. Liechtenstein media not reporting on Liechtenstein topics would also be excluded, this is not meant to be a way of discriminating against foreign applicants.

aid amount will be calculated closer to ‘hard facts’ – i.e. on the basis of a documented journalistic editorial work - rather than pure estimates.

Section 5(3) of the Media Support Act stipulates that *indirect support* consists firstly of a proportionate reimbursement of the costs of a media undertaking for the distribution of a medium in the sense of section 4 (1) of the draft Media Support Act in Liechtenstein. The upper ceiling is 25% of the actual distribution costs, which have to be demonstrated. Distribution costs are defined as those costs, which are necessary for making the medium accessible to the consumer, e.g. the delivery costs for print media, transmission costs for broadcasting and provider costs for services of the information society. Costs concerning infrastructure, e.g. costs for the delivering vehicle, the broadcasting equipment, the computer, are not considered as distribution costs.

Indirect support further contains the support for the training and education of media workers, which are involved in the editorial content creation for a medium in the meaning of section 4(1) of the draft Media Support Act. It is limited to 40% of the staff training and education costs, which actually incurred. Direct and indirect media support can be combined.

2.5 Duration and budget

The scheme enters into force on 1 January 2007. While its duration is not limited by Parliament, the Liechtenstein authorities ask for an authorisation from the Authority only for five years and commit themselves to re-notify the scheme before 1 January 2012 to the Authority.

The budget will be decided annually by the Parliament and be distributed by the Media Commission. The first support will be paid out in 2008, based on the budget approved in 2007.

An annual amount of CHF 1.5 million (some EUR 966 000)⁸ is foreseen, i.e. CHF 7.5 million (some EUR 4 829 000) for a period of five years.

2.6 Cumulation

According to section 4(2)(d) of the draft Media Support Act, the support for a media undertaking on the basis of the draft Media Support Act is excluded, if the same media undertaking is already supported by other state-financed funds. This rule also applies with regard to so-called ‘*de minimis aid*’ according to the Act referred to under point 1e) in Annex XV of the EEA Agreement⁹.

⁸ Conversion rate of 1,5530 for 2006, taken from the Authority’s website
<http://www.eftasurv.int/fieldsOfWork/fieldStateAid/dbaFile791.html>

⁹ Commission Regulation No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to the *de minimis aid*, OJ 2001 L 10, p. 30.

II. APPRECIATION

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

Article 61 (1) of the EEA Agreement reads: *“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.”*

1.1 State resources

The proposed measures will be financed through budgetary allocations and are therefore State resources within the meaning of Article 61 (1) of the EEA Agreement.

1.2 Advantage and Selectivity

The undertakings which will be granted the support in the form of salary contributions, grants for training and for the distribution of the media are compensated for costs which they otherwise would have to bear. Thus the support measure confers an advantage on these undertakings.

The measure is also selective as it only favours media undertakings (sectoral aid) and within this sector only certain media undertakings which fulfil the respective eligibility criteria (as e.g. a certain periodicity of the medium).

1.3 Distortion of competition and effect on trade

According to the jurisprudence of the Court of Justice of the European Communities (hereinafter ‘the Court of Justice’), where an aid strengthens the financial position of firms in a particular sector involved in intra-Community trade, this trade must be regarded as affected within the meaning of Article 87(1) of the EC Treaty. The Court further stressed that trade can also be affected if the aid recipient in question is not itself active in cross-border activities.

The support awarded under the draft Media Support Act is liable to strengthen any recipient’s financial position compared with undertakings competing in trade between the Contracting Parties. The competition takes place between undertakings eligible for aid which compete with other undertakings not fulfilling the eligibility criteria, e.g. on the periodicity, and which could be outside Liechtenstein. It therefore does not matter that the aid scheme is also open to foreign media producers.

It should further be noted that the notification concerns an aid scheme which is formulated in the abstract and potentially concerns an unlimited number of aid

recipients¹⁰ which will be determined only in the future. The media produced by the potential aid recipients covers many different areas, such as print media, broadcasting, but also the internet. This leaves room for various competitive relations between media undertakings receiving aid and other media producers, whereby many of these activities are by nature open to cross-border trade. This applies in particular, as the Authority has already found in its decision 192/00/COL, for the dissemination by electronic means, i.e. *the internet*, which by its very nature does not stay within national borders.

It should be noted that as regards *broadcasting*, the Authority had already in its earlier decision 192/00/COL recalled that the Acts referred to in point 1 of Annex X to the EEA Agreement aim at creating coherent conditions within the EEA so as to facilitate the development of a single market in broadcasting, thereby presupposing a tradable activity. Also in the Authority's State Aid Guidelines on aid for public service broadcasting, the effect on trade for the area of broadcasting is assumed likely to be fulfilled as acquisitions of sales programme rights often take place on an international level and advertising has a cross-border effect¹¹. This is in particular the case if there are homogenous linguistic areas across national boundaries, as it is the case for Liechtenstein.

In its earlier decision 192/00/COL the Authority had also addressed the situation for *newspaper support* and stressed that in the case of Liechtenstein, there is no language barrier between Liechtenstein and its German speaking neighbours. The cultural differences between Liechtenstein and its neighbours are not of the kind to deny any demand in Liechtenstein news and information. In particular in the border areas even foreign media producers might have an interest in reporting on Liechtenstein events and the grant of state support might be an element in this decision.

Given the above, the Authority finds, that while it is often argued that publishing unlike other industrial activities is language dependent and thus State support normally does not extend beyond national borders, it cannot be excluded that the notified scheme will distort competition with other EEA undertakings. The fact that the trade effect might only be limited, is not relevant in this regard. According to case law by the Court of Justice it does neither matter whether the impact on trade is significant or substantial¹².

¹⁰ Although the Liechtenstein authorities foresee that under the new Media Support Act aid will be given to a smaller number of aid beneficiaries.

¹¹ The Authority is aware that the only radio station in Liechtenstein has been nationalised. However, the present analysis concerns an aid scheme and it is not excluded that in the future aid to broadcasting activities, which are covered by the notion of 'medium' in the draft Media Support Act, could be granted.

¹² Case T-55/99 *Confédération Espanola de Transporte de Mercancías (CETM) v Commission of the European Communities* [2000] ECR II-3207, paragraphs 79 *et seq.* on the former Article 92 of the EC Treaty, now Article 87 of the EC Treaty which corresponds to Article 61 (1) of the EEA Agreement.

The Authority therefore considers that the notified support measures distort or threaten to distort competition and have an effect on trade between the Contracting Parties.

2. Notification and stand-still obligation

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*”.

The new draft Media Support Act will replace the former Media Support Act, whose aid measures will be repealed. The measures therefore constitute new aid in the meaning of Article 1c) in Part II of Protocol 3 to the Surveillance and Court Agreement.

The Liechtenstein authorities have notified the new aid measures and are awaiting the Authority’s decision before putting the aid measures into effect. Hence, the Liechtenstein authorities have complied with the notification and stand-still obligations in Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

3. Conclusion

Given the above findings, the Authority comes to the conclusion that the direct and indirect support provided to media undertakings in the draft Media Support Act constitutes State aid within the meaning of Article 61 (1) of the EEA Agreement.

4. Compatibility of aid measures under the draft Media Support Act

The conditions foreseen in Article 61(2), Article 61(3)(a) and (b) of the EEA Agreement are not applicable to the measures at hand.

There are no generally applicable rules for the assessment of aid in the media sector in the EEA Agreement. The EEA Agreement does not contain a cultural exemption comparable to Article 87(3)(d) of the EC Treaty¹³. In any event, the aid in question would not fall under such an exemption possibility. According to the practice of the European Commission, the cultural exemption is to be interpreted strictly. As stated by the Commission in its *Kinderkanal* and *Phoenix* Decision, the education and democratic needs of a Member State have to be regarded as distinct from the promotion of culture¹⁴. While the aid might also be disbursed to cultural media, the

¹³ However, in earlier decisions the Authority has assessed cultural aid according to the criteria established under Article 87(3)(d) EC by application of Article 61 (3)(c) of the EEA Agreement.

¹⁴ See Commission Decision N 74/2004 – *Aide à la presse écrite flamande.*, Commission Decision NN 70/98 *State aid to public broadcasting channels ‘Kinderkanal and Phoenix*, OJ 1999 C 238, p. 3. See Commission Decision N 74/2004 – *Aide à la presse écrite flamande.*

aid is clearly not limited to such support¹⁵, but in particular aims at a medium whose journalistic-editorial content focuses on Liechtenstein politics and events, which the Liechtenstein authorities consider a necessary precondition for the democratic process.

Neither has the Authority adopted any State Aid Guidelines which would cover the aid in question. The indirect support for training journalists also does not fall under the Act referred to under point 1d) of Annex XV to the EEA Agreement (Training Aid Block Exemption)¹⁶. Specific training for journalists would involve tuition directly and principally applicable to the employees' present or future position in the assisted media undertaking and would therefore have to be regarded as specific training within the meaning of Article 2(d) of the Training Aid Block Exemption rather than general training. For specific training however, aid intensities of 25% for large firms and 35% for small and medium-sized firms apply, see Article 4 of the Training Aid Block Exemption. The notified measures however envisage a higher aid intensity of 40%.

Therefore, the State support for media undertakings granted under the draft Media Support Act has to be assessed directly 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 compatible with the functioning of this Agreement... where such aid does not adversely affect trading conditions to an extent contrary to the common interest*".

In this respect the Authority will examine the necessity and proportionality of the measure, and whether it affects trade contrary to the interest of the Contracting Parties.

As outlined in the Commission's State Aid Action Plan, state aid should only be used when it is an appropriate instrument for meeting a well defined objective, when it creates the right incentives, is proportionate and distorts competition to the least possible extent. For that reason, appreciating the compatibility of state aid is fundamentally about balancing the negative effects of aid on competition with its positive effects in terms of the common interest¹⁷.

The aid in question is to be regarded as operating aid. It is settled case-law that operating aid in principle does not qualify for exemptions under Article 61(3) of the EEA Agreement¹⁸. The effect of such aid normally is to distort competition in the sectors in which it is granted, whilst being incapable, by its very nature, of achieving any of the objectives of the exceptions provided for in the EC Treaty. However, in exceptional circumstances, where the measure is not only able, but also necessary to

¹⁵ See in this respect also Commission Decision *on the measures notified by Italy in favour of the publishing industry*, OJ 2006 L 118, p. 8.

¹⁶ Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid (OJ 2001 L 10, p. 20), as amended by Commission Regulation (EC) No 363/2004 of 25 February 2004 (OJ 2004 L 63, p. 20).

¹⁷ State Aid Action Plan, COM (2005) 107 final.

¹⁸ Case T-190/00 *Regione Siciliana v Commission* [2003] ECR II-5015, with regard to Article 87(3)(c) EC.

achieve an objective in the common interest, such aid might be authorised under Article 61(3)(c) of the EEA Agreement.

4.1 Objective of common interest

The question first arises, whether the aid measure is aimed at a well-defined objective of common interest. In this regard one has to take into account that the aid has rather to be regarded as a sectoral aid than following a horizontal objective, such as research and development, environmental protection, etc. However, the Liechtenstein authorities stress that the need for public support in this sector emerges from the desire and necessity to preserve and promote media pluralism and media diversity with regard to information on Liechtenstein events, which are otherwise not widely reported upon. Pluralism and media diversity are accepted as legitimate policy goals with the EEA and the Community

The importance of these objectives was e.g. recognised in the Commission's communication on services of general interest in Europe¹⁹, the Protocol to the Amsterdam Treaty on Public Broadcasting as well as the Resolution of the Council of the European Communities concerning public service broadcasting²⁰. The Authority's State Aid Guidelines, Chapter 24C, acknowledge that e.g. public service broadcasting has "*an important role to play in promoting cultural diversity in each country, in providing educational programming, in objectively informing the public, in guaranteeing pluralism (...)*". It is further accepted in the Guidelines that public service broadcasting enriches the public debate and ensures that all citizens participate to a fair degree in public life, which shows that also within the EEA public discussion is acknowledged as an important element for the necessary opinion-shaping process which enables citizens to exercise their democratic rights²¹.

From that it can be concluded that the pursuit of pluralism and media diversity is a legitimate goal to be followed by the Liechtenstein Media Support Act.

4.2 Is the State aid the appropriate policy instrument?

According to the Liechtenstein authorities, other measures, such as infrastructural measures or labour market initiatives, have been investigated. However, these policies turned out to be too general to achieve the precise editorial objectives of the Media Support Act, so that the Liechtenstein authorities came to the conclusion that only direct and indirect grants for concrete editorial works, the dissemination of

¹⁹ COM (2000) 580 final of 20 September 2000, see also the Commission's Green Paper COM (2003)270 final of 21.05.2003.

²⁰ OJ 1999 C 30, p. 1; incorporated into the EEA Agreement in Annex X, point 4, as an act which the Contracting Parties shall take note of, by Decision No 118/1999, OJ 2000 L 325, p. 33 and EEA Supplement No 60, 21.12.2000, p. 423 (Icelandic) and p. 424 (Norwegian), e.i.f. 1.10.1999.

²¹ The preservation of information pluralism was further considered as an objective in Article 11(2) of the Charter of Fundamental rights of the European Union. Article 22 of the Charter confirms the principle that the Union shall respect cultural, religious and linguistic diversity. The Constitution of the European Union (article I-2) considers pluralism as one of the fundamental values on which the Union is based.

Liechtenstein media and training, were effective in reaching the goal of achieving more media diversity.

It should also be underlined that the Liechtenstein Media Support Act is based on the principle that private media undertakings should finance their costs on a commercial basis and that State measures are only admissible if they are necessary to pursue the above objectives. This reflects the idea of the State Aid Action Plan to assess the existence of a market failure, which prevents markets to achieve desired objectives of common interest.

By covering costs related to the provision of Liechtenstein information, the State gives indeed an incentive to engage in such activities which go beyond what normal market forces would produce. While the aid is paid out retroactively, the objective award criteria of the aid are known to the aid recipients in advance, so that a media undertaking can decide on the basis of the Media Support Act whether to engage in creation and dissemination of a medium covered by the Act with the perspective of a future (although not guaranteed in amount) refund by the State. The knowledge of State support will therefore play a role in the decision of the media undertakings of what kind of media content they will produce. Also for the two biggest media undertakings Liechtensteiner Vaterland and Liechtensteinisches Volksblatt, the aid will provide such an incentive effect. As has been documented by the Liechtenstein authorities to the Authority, these two newspapers would not be able to continue their reports on Liechtenstein events without the state support, as given the smallness of the market the publication of the newspapers does not enable the respective media undertakings to generate an adequate revenues. These newspapers are however the only two media, which daily and to a greater extent (circulation) report on Liechtenstein subjects. The discontinuation of these media would have a negative effect on the media pluralism in Liechtenstein.

4.3 Proportionality of the aid

In order for the aid measure to be compatible with Article 61(3)(c) of the EEA Agreement, it must be proportionate to the objective it pursues. The Authority notes that at present there are no generally applicable criteria on the aid intensity in the media sector²². However, compatibility requires that the aid amount is limited to the minimum necessary to achieve the desired objective.

With regard to the necessity of the support measure as such, the Authority takes note of the fact that the media environment in Liechtenstein is not developed to the same extent as in most other countries in the EEA. The market is very small and producers of media which deal predominantly with Liechtenstein issues have only a limited catchment area and a limited circulation/emission of their medium compared to other media undertakings within the EEA. As a result, access to advertising revenues is also limited. Only very few media undertakings (two newspapers at present) consequently provide Liechtenstein information. It is reasonable to assume, as stated by the

²² From a purely factual point of view, it should be noted that media support are currently subsidised in most EEA States through direct/or indirect State support.

Liechtenstein authorities, that foreign producers do not provide Liechtenstein tailored information to a sufficient degree. Therefore, the Authority can accept a justifiable need for the State to promote information focussing on Liechtenstein events.

The notified Media Support Act reduces the number of aid beneficiaries by limiting the number of aid beneficiaries to media undertakings, who are deemed to have a more direct influence for the opinion shaping than the formerly wide possibility of support under the old Media Act. In particular, the aid is further limited by no longer including aid directly to journalists, which might have in the past resulted in double support for a journalistic work, as both the individual journalist and the distributing media undertaking might have been able to claim support.

Direct grants are further limited in two ways: Firstly, the aid is only granted for those workers who are involved in the creation of a journalist-editorial work dealing with Liechtenstein contents. Secondly, of these standardised wage costs, only 30% will be given as aid. As the aid will be handed out retroactively, the Media Commission will have the obligation to precisely verify that the eligibility criteria have been met and that no overcompensation will take place.

The same retroactive verification takes place regarding the other two support measures (distribution aid and training aid). For these measures, only such costs will be considered which actually occurred. As explained in the Government proposal, a media undertaking, which publishes several media, has to list the costs and responsibilities of the respective journalists separately, so that a double compensation will be avoided²³.

The Authority therefore finds that the draft Media Support Act contains sufficient mechanisms to limit the aid to the necessary amount.

4.4 Balancing the distortions of competition and the effect on trade with the positive effects of the aid in terms of the common interest

The Authority has to carry out a balancing test in order to establish whether the aid does not adversely affect trading conditions to an extent contrary to the common interest. This means that the Authority will have to weigh the positive effects of the aid with regard to the pursued objective of achieving more media diversity with the negative effects on competition and trade.

In general, the Authority upholds its finding as expressed in decision 191/00/COL *“that aid under the Media Support Act is granted to ensure the broadest possible information about Liechtenstein related issues. The dissemination of programmes and news and reports which have as their focus Liechtenstein plays a fundamental role in preserving the cultural identity of the Liechtenstein population and serves as a vehicle for exercising the freedom of expression, fostering pluralism of opinions and thus provides individuals with the necessary information to exercise their democratic rights and obligations within the Liechtenstein society. Thereby, the Media Support*

²³ Government bill, explanation on section 7 of the draft Media Support Act.

Act contributes to the effective exercise of democratic rights, such as the guarantee of a free opinion shaping process as well as the preservation and promotion of media diversity.”

The Authority has to take into account several additional elements:

- (1) Firstly, the aid measure constitutes operating aid, which generally produces a more distorting effect on competition and trade than investment aid. However, the Authority takes positively into account, that the aid is not meant to reduce the daily running costs of the media undertaking, but calculated on the basis of costs for the creation of a journalistic editorial content creation, training or dissemination of a medium. In particular with regard to the direct grants, concern has been taken to limit the operating support for the – documented – production of a medium dealing with Liechtenstein topics. Contrary to the support of press and media in other States, the aid amount is therefore not linked to the general financial situation of the company, but to the production of a journalistic-editorial work reporting on Liechtenstein politics and events.
- (2) It should be noted that due to the nature of the supported activity (i.e. production of a medium dealing predominantly with Liechtenstein topics), the effect on trade is – while existing – limited as the supported activity is primarily relevant for the Liechtenstein population. As found by the European Commission in its decision regarding the Italian support for the publishing industry, linguistic and cultural barriers limiting competition and cross-border trade between Member States, at least for the book sector, seem to persist. The Commission stresses that developments in the book, magazine and newspaper trade depend on a complex interplay of different factors (economic, social aspects, demographics, education, leisure trends, number of public libraries, purchasing power). The European printing and publishing industry is described to be more a collection of national industries than an integrated European industry, as can be seen from the small proportion of turnover accounted for by the exports. As the Commission further laid down, it seems that for the publishing sector, the number of languages spoken inside the Community constitutes an additional barrier to the ‘Europeanisation of this sector’²⁴.

As demonstrated by the Liechtenstein authorities, the circulation of the two biggest media, the two newspapers, is very limited with 8 000 or 10 000 daily copies, of which around 80% are sold within Liechtenstein, 10% within Switzerland and the rest throughout the world. The transnational aspect is therefore very limited and is even smaller for the other aid recipients, which distribute media on an even smaller scale and – with the exception of the internet - have hardly any cross-border distribution. As shown by the figures

²⁴ Commission Decision *on the measures notified by Italy in favour of the publishing industry*, above fn.15 of this Decision, paragraphs 58 and 59.

for the 2005 support under the old act, of 13 aid recipients²⁵, only three had EEA distribution (Liechtensteiner Vaterland, LIEWO Liechtenstein newspaper, which is four times a year distributed in Austria and Liechtensteinisches Volksblatt). Of the remaining ten aid recipients, five also distributed in Switzerland, whereas the other five only had distribution in Liechtenstein.

- (3) The total amount of the aid is, with aid intensities of 30% for direct grants, 25% for dissemination costs and 40% for training costs, limited. While the training cost support exceeds the threshold of 35% for medium-sized undertakings, the excess of 5 percentage points is, given the relative limited trade impact as described above, acceptable.

It should further be noted that most of the aid recipients are likely to be small and medium-sized undertakings. In annual reports by the Liechtenstein authorities reported on the aid beneficiaries and aid amounts allocated under the previous aid schemes. The Liechtenstein authorities specified, for the 2005, the number of small and medium-sized companies among the group of beneficiaries. This shows that of the 16 aid recipients, ten were small sized companies, three medium-sized, and three individual journalists (the latter will no longer be supported under the Media Support Act).

The aid amounts, likewise based on the annual report 2005, were - with the exception of the recipients Liechtensteinisches Volksblatt and Liechtensteiner Vaterland - limited. Of the 16 aid recipients of media grants, the other 14 recipients received aid amounts ranging from EUR 1000 to 80 000, with an average of EUR 27 000²⁶.

As indicated, more aid (EUR 200 000 in direct media contributions and another 200 000 resulting from performance agreements) goes however to each of the Liechtenstein newspapers. However, the Liechtenstein authorities have demonstrated to the Authority that both newspapers would not be able, given the small circulation of the newspaper, to generate sufficient revenues and to uphold their business without the state support.

- (4) Compared to the former Media Support Act, the support under the Media Support Act has been tightened and the eligibility criteria have been made stricter to achieve a more focused aid in relation to the pursued objective of increased pluralism.
- (5) The support does not involve any export aid.

²⁵ The journalists are not counted in this calculation, ie. the number is 13 instead of 16 aid recipients for this point.

²⁶ Taken over three years, the cumulated amount of aid over three years would in most cases stay below the new de minimis threshold of EUR 200 000 as provided for in the new draft regulation on de minimis aid, see publication on the European Commission's webpage, DG Competition, http://ec.europa.eu/comm/competition/state_aid/overview/dm_en.pdf.

- (6) The common interest is further served by the fact that media undertakings from other EEA States can also obtain support under the scheme, as long as they fulfil the eligibility criteria and report on Liechtenstein politics and events.

Compared with a former draft, the notified draft Media Support Act does not longer contain a clause according to which the main dissemination area of the medium has to be Liechtenstein, which would have excluded e.g. foreign (Austrian media undertakings), which would have considered to report about Liechtenstein in their medium. However, as these undertakings are likely to have their main catchment area outside the Principality of Liechtenstein, they would not have been entitled to the support. This clause, which might have raised concerns of discrimination under the internal market rules, has not been upheld in the notified draft Media Support Act.

- (7) While the duration of the scheme is not formally limited, the Liechtenstein authorities have asked for an authorisation of only five years and committed themselves to a re-notification of the scheme to the Authority before 1 January 2012. This gives the Authority a chance to verify automatically within a not too long period that the conditions which justify the state support are still the same²⁷.

The global amount for the aid scheme over this five-year period of CHF 7,5 million is equally limited.

- (8) The qualitative scrutiny of whether all eligibility criteria have been fulfilled takes place at the moment when the aid is granted, as the aid is handed out only retroactively for the previous calendar year. By that system the Liechtenstein authorities can ensure that aid is only given if the objectives of the Media Support Act have been achieved by the journalistic editorial work in question. Against this background, it is not necessary for Liechtenstein to establish annual verifications on whether the aid granted was in line with the eligibility criteria.

Balancing these factors against the acknowledged objective to preserve media diversity and to offer information to a small population within the European Economic Area, the Authority cannot find that the trading conditions are affected to a degree which is contrary to the common interests of the Contracting Parties.

²⁷ See as regards the duration of aid schemes in this area of five and ten years in Commission Decision *on the measures notified by Italy in favour of the publishing industry, above fn. of this Decision* and of five years in Commission Decision N 74/2004 – *Aide à la presse écrite flamande, see above fn. 14 of this Decision*.

5. Conclusion

The Authority concludes that the aid measures provided for under the Media Support Act qualify for exemptions under Article 61(3)(c) of the EEA Agreement and can therefore be considered compatible with the functioning of the EEA Agreement.

The Authority recalls Liechtenstein's obligation under Article 21(1) in Part II of Protocol 3 to the Surveillance and Court Agreement and Article 5 in conjunction with Annex III to the Authority's Decision 195/04/COL of 14 July 2004 to submit annual reports on all existing aid schemes. This equally applies to the present scheme under the draft Media Support Act.

HAS ADOPTED THIS DECISION:

Article 1

The Authority does not raise objections against the notified aid measures provided for in draft Media Support Act of Liechtenstein. The measures are compatible with Article 61(3)(c) of the EEA Agreement.

Article 2

This Decision is addressed to the Principality of Liechtenstein.

Article 3

Only the English version is authentic.

Done at Brussels, 20 September 2006

For the EFTA Surveillance Authority

Bjørn T. Grydeland
President

Kristján Andri Stefánsson
College Member