

Case No: 66338
Event No: 524725
Dec. No: 255/09/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 10 June 2009

on a proposed amendment to the support scheme relating to temporary reimbursement in
respect of film making in Iceland

(Iceland)

THE EFTA SURVEILLANCE AUTHORITY¹

Having regard to the Agreement on the European Economic Area², 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 Justice³, in particular to Article 24 thereof,

Having regard to Article 1(3) of Part I and Article 4(3) of Part II of Protocol 3 to the
Surveillance and Court Agreement⁴,

Having regard to the Authority's Guidelines on the application and interpretation of
Articles 61 and 62 of the EEA Agreement⁵, and in particular the Chapter on state aid to
cinematographic and other audiovisual works,

Having regard to the Authority's Decision of 14 July 2004 on the implementing provisions
referred to under Article 27 of Part II of Protocol 3⁶,

Having regard to the Authority's Decisions Nos. 114/99/COL of 4 June 1999,
380/00/COL of 18 December 2000 and 390/06/COL of 13 December 2006⁷,

Whereas:

¹ Hereinafter referred to as the Authority.

² Hereinafter referred to as the EEA Agreement.

³ Hereinafter referred to as the Surveillance and Court Agreement.

⁴ Hereinafter referred to as Protocol 3.

⁵ 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 Authority on 19 January 1994, published in the Official Journal of the European Union (hereinafter referred to as OJ) L 231 of 03.09.1994 p. 1 and EEA Supplement No 32 of 03.09.1994 p. 1. The Guidelines were last amended on 22 April 2009 and are hereinafter referred to as the State Aid Guidelines. An updated version thereof is published on the Authority's website:

<http://www.eftasurv.int/fieldsofwork/fieldstateaid/guidelines/>

⁶ Decision No 195/04/COL of 14 July 2004 published in OJ C 139 of 25.05.2006 p. 57 and EEA Supplement No 26 of 25.05.2006 p. 1, as last amended. The consolidated version of Decision No 195/04/COL is published on the Authority's website:

http://www.eftasurv.int/fieldsofwork/fieldstateaid/legaltexts/dec_195_054_col_171208.pdf

⁷ Decisions can be found on the Authority's website:

<http://www.eftasurv.int/fieldsofwork/fieldstateaid/stateaidregistry/>

I. FACTS

1 Procedure

The Icelandic authorities notified a proposed amendment to the support scheme relating to temporary reimbursement in respect of film making in Iceland pursuant to Article 1(3) of Part I of Protocol 3 by letter of 27 April 2009 (Event No 516752).

2 Description of the proposed measures

2.1 Background

The support scheme is laid down in Act No 43/1999 on Temporary Reimbursements in Respect of Film Making in Iceland, with later amendments⁸ and in Regulation No 1011/2007 on Temporary Reimbursements in Respect of Film Making in Iceland⁹.

The Act and the Regulation cover a mechanism for support of film production in Iceland whereby a share of production costs may be reimbursed to the producer after the production. The objective of the support, as described in Article 1 of the 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*”. The Regulation, which has its legal basis in Article 7 of the Act, contains *inter alia* detailed procedural rules for the operation of the scheme.

The scheme started by the entry into force of the Act on 30 March 1999.

By Decision No 114/99/COL of 4 June 1999, the Authority decided to initiate a formal investigation procedure regarding the aid measures provided for in the Act. 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. In their response, the Icelandic authorities amended the Act, taking into account the concerns raised by the Authority.

By Decision No 380/00/COL of 18 December 2000, closing the formal investigation procedure commenced by Decision No 114/99/COL, the Authority approved the amended Act which entered into force on 29 December 2000. The amended Act was to cease to be in effect on 31 December 2006.

By Decision No 390/06/COL of 13 December 2006, the Authority approved the prolongation of the scheme until 31 December 2011. Moreover, the Authority approved certain amendments to the scheme, *inter alia* the increase of the reimbursable share of production costs from 12 % to 14 %. For a detailed description of the support scheme, reference is made to section 2 of Decision No 390/06/COL of 13 December 2006.

2.2 Proposed amendment

The Icelandic authorities have notified a further proposed amendment of the scheme whereby the reimbursable share of production costs will increase from 14 % to 20 %. The amendment is laid down in Act No 39/2009 of 2 April 2009, amending Act No 43/1999. According to the Icelandic authorities, the aim of the amendment is to continue to present Iceland as an option for film production in Europe and to compete on an equal basis with other parties to the EEA Agreement.

⁸ “*Lög um tímabundnar endurgreiðslur vegna kvikmyndagerðar á Íslandi*”, hereinafter referred to as the Act.

⁹ “*Reglugerð um tímabundnar endurgreiðslur vegna kvikmyndagerðar á Íslandi*”, hereinafter referred to as the Regulation.

II. ASSESSEMENT

1 The presence of state aid

In its Decisions Nos. 380/00/COL and 390/06/COL, the Authority found the reimbursements under the scheme in question to fall within the definition of state aid within the meaning of Article 61(1) of the EEA Agreement. The Authority has not been presented with new elements calling for a different assessment with respect to the scheme at this point.

2 Procedural requirements

Pursuant to Article 1(3) of Part I of Protocol 3, “*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 Icelandic authorities submitted a notification of the proposed amendment of the Act with a letter dated 27 April 2009 (Event No 516752). However, the bill of law amending the Act was adopted by the Icelandic Parliament on 2 April 2009 and entered into force on 6 April 2009, *i.e.* before the Authority had taken a final decision thereon. The amended Act authorises the Minister of Industry to apply it without the need for any further implementing measures. The Authority therefore concludes that the Icelandic authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3 Compatibility of the aid

Whereas the EEA Agreement does not contain a cultural exception similar to that provided for in Article 87(3)(d) EC, the Authority has in its previous decisions considered that film support measures may be approved on cultural grounds on the basis of Article 61(3)(c) of the EEA Agreement. The Authority has applied the same criteria as those used by the European Commission on the basis of Article 87(3)(d) EC read in conjunction with the Commission’s Communication on certain legal aspects relating to cinematographic and other audiovisual works¹⁰. The Communication has now been adopted by the Authority in form of the Chapter of the Authority’s State Aid Guidelines on state aid to cinematographic and other audiovisual works.

The proposed amendment of the support scheme, whereby the reimbursable share of production costs under the Act will be increased from 14 % to 20 %, is the only change to the measures approved by the Authority in its Decisions Nos. 380/00/COL and 390/06/COL. All other aspects of the support scheme remain unchanged.

As the proposed increase of the reimbursable share of production costs from 14 % to 20 % is manifestly within the limits of the maximum aid intensity of 50 % of the production costs¹¹, the proposed amendment of the scheme relating to temporary reimbursement in respect of film making in Iceland does not alter the assessment made by the Authority in its previous Decisions Nos. 380/00/COL and 390/06/COL approving the scheme.

¹⁰ 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 (COM(2001)534 final of 26.9.2001, OJ 2002 C 43); prolonged by the Commission Communication of 13 June 2007 (OJ C 134, 16.6.2007, p. 5).

¹¹ Point 15(3) of the Chapter of the Authority’s State Aid Guidelines on state aid to cinematographic and other audiovisual works.

4 Conclusion

The Authority considers that the proposed amendment of the scheme relating to temporary reimbursement in respect of film making in Iceland is compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(c) of the EEA Agreement read in light of the Chapter of the Authority's State Aid Guidelines on state aid to cinematographic and other audiovisual works.

The Authority regrets, however, that the Icelandic authorities did not respect their obligations pursuant to Article 1(3) of Part I of Protocol 3.

The Icelandic authorities are reminded about the obligation resulting from Article 21 of Part II of Protocol 3 in conjunction with Article 6 of Decision 195/04/COL to provide annual reports on the implementation of the scheme.

The Icelandic authorities are also reminded that all plans to modify this scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided not to raise objections to the proposed increase of the maximum reimbursable share of production costs from 14 % to 20 % under Act No 43/1999 on Temporary Reimbursements in Respect of Film Making in Iceland as amended by Act No 39/2009.

Article 2

This Decision is addressed to the Republic of Iceland.

Article 3

Only the English version is authentic.

Done at Brussels, 10 June 2009

For the EFTA Surveillance Authority,

Per Sanderud
President

Kurt Jaeger
College Member