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Decision No 159/20/COL

Ministry of Trade, Industry and Fisheries
PO Box 8090
Dep 0032 Oslo
NORWAY

Subject: COVID-19 Amendments for the period 1 September to 31 December 2020 to the compensation scheme for the cancellation or postponement of cultural events

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the notified amendments to the compensation scheme for the cancellation or postponement of cultural events (“the measures”), it considers that the measures constitute state aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections,¹ as the measures are compatible with the functioning of the EEA Agreement, pursuant to its Article 61(2)(b). ESA has based its decision on the following considerations.

2 Procedure

- (2) The Norwegian authorities formally notified the measures on 14 December 2020.²

3 Description of the measures

3.1 The compensation scheme for the cancellation or postponement of cultural events

- (3) By [Decision No 032/20/COL](#),³ ESA approved a compensation scheme for undertakings affected by cancellations or postponements of cultural events due to the COVID-19 outbreak (“the compensation scheme”). Undertakings were eligible for grants under the compensation scheme if they had to cancel or postpone cultural events as a consequence of the COVID-19 situation. The compensation scheme applied to the whole territory of Norway and was open to organisers of cultural events.
- (4) By [Decision No 091/20/COL](#),⁴ ESA approved amendments to the compensation scheme, as well as a prolongation of the compensation period until 31 August 2020.

¹ Reference is made to Article 4(3) of the Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

² Documents No 1168769 and No 1168771.

³ ESA’s [Decision No 032/20/COL](#) of 3 April 2020 on COVID-19 Compensation scheme for the cancellation or postponement of cultural events.

⁴ ESA’s [Decision No 091/20/COL](#) of 16 July 2020 on COVID-19 Amendments and prolongation of the compensation scheme for the cancellation or postponement of cultural events.

- (5) By [Decision No 126/20/COL](#),⁵ ESA approved a renewal of, and amendments to, the compensation scheme until 31 December 2020. ESA also approved an increased budget for the compensation period 1 May to 31 August 2020.
- (6) The general conditions of the compensation scheme, as amended, are described in the aforementioned decisions.

3.2 Objective and reasons for amending the compensation scheme

- (7) The COVID-19 pandemic is still ongoing. There are still significant restrictions in place for the organisation of cultural events, in order to prevent the spread of COVID-19. The restrictions will likely continue to result in most larger events being cancelled and smaller events being held with a loss.
- (8) This autumn, Norway has experienced a sharp rise in infections nationally and major outbreaks locally, especially in Oslo and Bergen. New and stricter measures have therefore been adopted both nationally and locally:
- Nationally, from 9 November 2020, public indoor events were limited to 50 persons for events without fixed seats, and 200 persons for events with fixed seats.⁶
 - Locally, the authorities in Bergen introduced on 7 November 2020 a ban on indoor events with more than 20 persons.⁷ On 10 November 2020, the authorities in Oslo introduced a temporary ban on all indoor events.⁸ The restrictions in Bergen were modified to 50 participants from 7 December 2020.⁹
- (9) The stricter measures have led to the cancellation of even more events scheduled for the remaining months of 2020 than previously foreseen.

3.3 Amendments that apply for the entire compensation period, i.e. September–December

- (10) The existing compensation scheme is limited to cancellations due to national restrictions.
- (11) Due to the sharp increase of local outbreaks, local authorities have to a larger extent than previously issued restrictions that go beyond national restrictions.¹⁰ The existing compensation scheme will therefore be amended to allow for compensation of events that are cancelled (or alternatively postponed or partly carried out if planned to be held in September) as a result of restrictions issued by a public authority in Norway, for example either at municipal or national level. Beneficiaries will only be eligible for compensation based on mandatory restrictions, not based on mere recommendations from the authorities.

⁵ ESA's [Decision No 126/20/COL](#) of 4 November 2020 on COVID-19 Renewal and amendments of the compensation scheme for the cancellation or postponement of cultural events.

⁶ Forskrift 27. mars 2020 nr. 470 om smitteverntiltak mv. ved koronautbruddet § 13a.

⁷ Forskrift 6. november 2020 nr. 2256 om smitteverntiltak i Bergen § 4.

⁸ Forskrift 8. mars 2020 nr. 1632 om forebygging av koronasmitte, Oslo kommune, Oslo § 1.

⁹ Forskrift 6. november 2020 nr. 2256 om smitteverntiltak i Bergen § 4.

¹⁰ See the Circular from the Ministry of Health and Care Services of 5 November 2020 Nr. I-7/2020 reference 20/4181 ([Rundskriv om kommunale smitteverntiltak](#)) which contains infection control measures to be considered issued by municipalities with increased outbreaks of COVID-19.

- (12) Moreover, the Norwegian authorities notify an increase in the NOK 200 million budget approved by [Decision No 126/20/COL](#). The budget for 1 September to 31 December 2020 will be increased by NOK 146 109 153 million, so that the total budget for this period constitutes NOK 346 109 153 million. This leads to a total annual budget for the compensation scheme of NOK 2 021 697 397.

3.4 Amendment that only applies for the compensation period from 1 October to 31 December

- (13) The existing compensation scheme, approved by Decision No 126/20/COL, makes aid for events scheduled from 1 October to 31 December 2020 conditional on the event having been planned before 1 August 2020.
- (14) For 1 October to 31 December 2020, the Norwegian authorities set up a GBER scheme to stimulate activity by granting aid to organisers carrying out events within public infection control measures.¹¹ The culture sector was encouraged to plan and carry out events since the start of August, when the planned GBER scheme was announced.
- (15) However, several of these events are now being cancelled, due to the stricter measures. Since many of the events were planned after 1 August 2020, they cannot receive compensation under the existing compensation scheme. The existing compensation scheme will therefore be amended so that events planned before 5 November, instead of 1 August, may be eligible for compensation.
- (16) According to the Norwegian authorities, beneficiaries must be able to document that the event was planned before 5 November 2020. The Norwegian Art Council may also request any information necessary.

3.5 Legal basis

- (17) The measures are based on the budget proposition Prop 51 S (2020-2021), subject to Parliament's approval.
- (18) The national legal framework for the amendments to the compensation scheme for eligible costs incurred in September is an amending regulation¹² to Regulation of 4 November 2020 No 2250 on a temporary compensation scheme in connection with cancellations, closings or postponements of events planned to be held in September 2020 as a result of the COVID-19 outbreak.
- (19) The national legal framework for the amendments to the compensation scheme for eligible costs incurred from 1 October to 31 December 2020 is an amending regulation¹³ to Regulation of 4 November 2020 No 2245 on a temporary compensation scheme in connection with cancellations or closings of events planned in October to December 2020 as a result of the COVID-19 outbreak.

3.6 Commitments

- (20) The Norwegian authorities have confirmed that all commitments previously given still apply in full.

¹¹ ESA received information from the Norwegian authorities regarding this GBER scheme, with aid reference GBER 51/2020/CUL. The national legal basis is [Regulation of 19 October 2020 No. 2020 on temporary grants to cultural events as a result of covid-19](#).

¹² Reference number not decided at the time of the notification.

¹³ Reference number not decided at the time of the notification.

- (21) The Norwegian authorities confirm that the amendment explained in Section 3.4 above does not affect the Ministry's commitment that it will not be possible to receive aid from the existing compensation scheme whilst also receiving aid from the scheme aimed at aiding organisers in the culture sector in carrying out events within public infection control measures.

4 Presence of state aid

- (22) Article 61(1) of the EEA Agreement reads as follows: “[...] 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.”
- (23) The qualification of a measure as aid within the meaning of this provision requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (24) ESA has already concluded that the compensation scheme constitutes state aid¹⁴ and the measures do not alter this assessment. The measures are amendments to the existing compensation scheme, in order to extend its scope of application, as well as an increase in the budget, and therefore constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

5 Procedural requirements

- (25) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“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.”
- (26) The Norwegian authorities have notified the measures and have committed to not letting them enter into force before they have been approved by ESA. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

6 Compatibility of the measures

- (27) ESA must declare state aid compatible with the functioning of the EEA Agreement under its Article 61(2)(b) provided that certain compatibility conditions are fulfilled. That provision reads: “The following shall be compatible with the functioning of this Agreement: aid to make good the damage caused by natural disasters or exceptional occurrences”. ESA has no discretion in assessing the compatibility of aid that falls within this category and meets the terms of Article 61(2)(b) of the EEA Agreement.
- (28) ESA concluded in [Decision No 032/20/COL](#), [Decision No 091/20/COL](#) and [Decision No 126/20/COL](#) that the compensation scheme is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(2)(b). The measures do not alter those conclusions.

¹⁴ See ESA's Decisions No 032/20/COL, 091/20/COL and 126/20/COL.

- (29) The COVID-19 outbreak is still ongoing in Norway and the Government and local authorities have imposed stricter restrictions on cultural events. These restrictions significantly limit the ability of the culture sector to organise cultural events. Moreover, Norway has experienced major outbreaks locally, especially in Bergen and Oslo. Due to the sharp increase of local outbreaks, local authorities have to a larger extent than previously issued restrictions that go beyond the national restrictions.
- (30) The measures do not affect the causal link between the damage compensated and the exceptional occurrence, i.e. the COVID-19 pandemic, as strict measures are still in place, which are likely to result in most larger events being cancelled and smaller events being held with a loss. Moreover, compensation related to cancelled events (alternatively postponed or partly carried out if planned for September) will be granted on the condition that the beneficiaries confirm and are able to document that the event was cancelled (or postponed or partly carried out if planned for September) as a result of a restriction issued by a public authority in Norway. Therefore, the direct link between the damage caused by the decisions of public authorities in response to the COVID-19 outbreak and the compensation remains ensured.
- (31) ESA concluded in Decision No 032/20/COL, Decision No 091/20/COL and Decision No 126/20/COL that the aid under the scheme is proportional to the damage caused by the exceptional occurrence. The measures do not affect the aid intensities and the cap on compensation per organiser or subcontractor. Hence, those limitations still contribute to the proportionality of the measure, as well as the avoidance of overcompensation. The budget increase does not undermine this.
- (32) Furthermore, the measures do not affect the duration of the compensation scheme; it remains of limited duration (four months). The compensation scheme will therefore not be in force longer than necessary to attain the goal of helping the supported undertakings overcome the exceptional occurrence.
- (33) ESA considers that the measures are appropriate, given the challenges they are meant to help overcome and the ongoing economic effects of the COVID-19 pandemic.
- (34) In light of the above, ESA finds that the amendments to the compensation scheme are consistent with its logic, and that they are proportionate given the exceptional occurrence of the COVID-19 pandemic and the ensuing circumstances.

7 Conclusion

- (35) On the basis of the foregoing assessment, ESA considers that the measures constitute state aid within the meaning of Article 61(1) of the EEA Agreement. Since no doubts are raised that this aid is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(2)(b), ESA has no objections to the implementation of the measures.
- (36) The Norwegian authorities have confirmed that the notification does not contain any business secrets or other confidential information that should not be published.

For the EFTA Surveillance Authority,

Yours faithfully,

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*This document has been electronically authenticated by Bente Angell-Hansen,
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