

Brussels, 8 May 2024  
Case No: 91919  
Document No: 1386557  
Decision No 069/24/COL

Ministry of Trade, Industry and Fisheries  
P.O. Box 8090 Dep  
0032 Oslo  
Norway

**Subject: Grant scheme for local broadcasting - amendments and prolongation**

## 1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the amendments and prolongation of the grant scheme for local broadcasting (“the measures”), it considers that they constitute State aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections<sup>1</sup> to the measures, as they are compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c). ESA has based its decision on the following considerations.

## 2 Procedure

- (2) The Norwegian authorities notified the measures on 15 April 2024.<sup>2</sup>

## 3 Description of the measures

### 3.1 Background

- (3) On 28 October 2020, ESA approved by Decision No 123/20/COL (“the initial decision”) a grant scheme for local broadcasting. The scheme was found to be compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c). The scheme is in force until 31 December 2026.
- (4) The scheme aims at contributing to media pluralism, freedom of expression and the strengthening of the democratic function of local audio and video media in society. The grant scheme stimulates a quality-oriented and economically viable environment for local media that reach a large audience. The grant scheme aims at achieving this by contributing to the digitisation of local radio, as well as to the production of programs with high technical and content quality, the development of the uniqueness of individual local broadcasters, competence development and cooperation between different local media.
- (5) Reference is made to the initial decision for more details on the scheme.

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<sup>1</sup> 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.

<sup>(2)</sup> Document No 1450134.

- (6) The Norwegian authorities commissioned a report from the Norwegian Media Authority, *inter alia*, on whether the scheme for local broadcasting has worked as intended (“the report”).<sup>3</sup> The report shows that the scheme for local broadcasting is used in accordance with its intention and the applicable award criteria. However, certain amendments were recommended to meet the objectives of the scheme even better.
- (7) In view of the report, and to further strengthen local media’s democratic function in society, and enhance the scheme’s contribution to media pluralism, diversity and freedom of speech, the Norwegian authorities have notified a prolongation of and certain amendments to the scheme.

### **3.2 The notified amendments to the scheme**

#### *3.2.1 Introduction*

- (8) The Norwegian authorities have notified the following three amendments to the scheme, as described further below:
- i. Inclusion of on-demand audio-visual media services and on-demand podcast services targeted at a local audience.
  - ii. Introduction of a requirement that recipients who produce and publish content must have a responsible editor.
  - iii. Increase of maximum operating aid for ethnic and linguistic minority radio stations.

#### *3.2.2 Inclusion of on-demand audio-visual media services and on-demand podcast services targeted at a local audience*

- (9) The current scheme is limited to local radio and television broadcasting. Consequently, providers of on-demand audio-visual media services and on-demand podcast services cannot apply for aid.
- (10) Due to market changes more consumption of sound and moving images is on-demand. In Norway, the proportion of listeners of audio media who listened to podcasts on an average day was 28% in 2022. The proportion among those who used video media who had access to paid streaming TV on an average day was 87% in 2022.<sup>4</sup>
- (11) According to the Norwegian authorities, on-demand media is likely to gain increased importance for the democratic function of local audio and video media in society in the future. On-demand podcasts and on-demand audio-visual services are important contributions to local media diversity, and such services have a special appeal to younger target groups. The Norwegian authorities therefore consider it to be appropriate and necessary to amend the existing scheme to give providers of on-demand audio-visual services and providers of on-demand podcast services the possibility to apply for project grants for local program productions, grants for individual competence increasing measures and grants for development projects. Beneficiaries must be providers that mainly provide audio-visual programmes or audio programmes targeted at a local audience.

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<sup>3</sup> Cf. [The Norwegian Media Authority’s report on the media support schemes](#) (2021), chapter 12.

<sup>4</sup> Cf. SSB Norwegian media barometer 2022

- (12) The term “audio-visual on-demand media services” will be defined in the Regulation on grants to local broadcasting<sup>5</sup> as “on-demand audio-visual services that mainly provide audio-visual programmes targeted at a local audience”. The term shall be understood in the same manner as defined in Section 1-1 of the Broadcasting Act.<sup>6</sup>
- (13) The term “on-demand podcast services” will be defined as “on-demand podcast services that mainly provide audio programmes targeted at a local audience”. The term “podcast service” will be further defined in the regulation.
- (14) The definition of podcast includes providers who have their own platform for publishing podcasts, and providers who publish via third-party podcast platforms, such as Apple or Spotify, provided they have editorial control over the selection and organization of the audio programs.

### *3.2.3 Introduction of a requirement that beneficiaries who produce and publish content must have a responsible editor*

- (15) The Norwegian authorities propose to introduce, as an explicit requirement in the scheme, that beneficiaries who produce and publish content must have a responsible editor, pursuant to Section 3 letter (a) of the Media Liability Act.<sup>7</sup> Hence, this requirement will apply to undertakings with a license to provide local radio or tv broadcasting, registered broadcasters, as well as providers of on-demand audio-visual services and on-demand podcast services. The requirement will not apply to national associations for local audio and visual media or undertakings with an operating license in digital transmitting networks for local radio.
- (16) By appointing an editor, a medium ensures that the editor is aware of, and takes personal responsibility for, the content that is published. This facilitates the undertaking’s compliance with applicable laws, ethical rules and journalistic principles. Furthermore, it provides a clear point of responsibility for aggrieved individuals, the police and the judiciary.

### *3.2.4 Increase of maximum operating aid amount for ethnic and linguistic minority radio stations*

- (17) Under the existing scheme, local radio stations for ethnic and linguistic minority groups are eligible for operating aid of up to NOK 75 000 per year.
- (18) The Norwegian authorities propose to raise the maximum aid amount from NOK 75 000 to NOK 200 000 per local radio station per year.
- (19) As pointed out in the report commissioned from the Norwegian Media Authority, the ethnic and linguistic minority radio stations contribute news and current affairs content, music, and other content in several different minority languages.<sup>8</sup>
- (20) The aid to ethnic and linguistic minority radios helps to maintain a diversity of undertakings, which in turn contributes to a diversity in content, in different

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<sup>5</sup> Regulation on grants to local broadcasting (FOR-2016-02-19-166).

<sup>6</sup> Act relating to broadcasting and audio-visual on-demand services (“Broadcasting Act”) (LOV-1992-12-04-127).

<sup>7</sup> Act relating to the editorial independence and liability of editor-controlled journalistic media (“The Media Liability Act”) (LOV-2020-05-29-59).

<sup>8</sup> The Norwegian Media Authority’s report on the media support schemes (2021), chapter 12.

languages and targeted at different minority groups. These radio stations function as an information channel for minority groups and contribute to spreading knowledge about Norwegian society among these groups.

- (21) The Media Authority notes, in its report, that only a small number of local radio stations have received operating aid for ethnic and linguistic minority radio stations (eight radio stations in 2021). The Media Authority points out that the size and financial situation of the minority radios differ. However, financial reports show that the operating aid granted to ethnic and linguistic minority radio stations under the current scheme, constituted a significant part of the income of the applicants over the last three years.<sup>9</sup>
- (22) The Media Authority considers that an increase in the maximum aid amount per radio station can improve the effect of the aid by enabling increased program production, rather than just covering fixed operating costs.<sup>10</sup>

### 3.3 Prolongation

- (23) The Norwegian authorities propose to extend the duration of the scheme until 31 December 2029.
- (24) The duration of the current scheme is until 31 December 2026. However, in view of the financial situation of local radio stations, the Media Authority's assessment is that there is still a need for support for such radio stations to be able to start broadcasting on DAB (Digital Audio Broadcasting).<sup>11</sup> According to the Norwegian authorities, the digital transition is expected to continue in many years to come. Local radio will be allowed to continue with analogue broadcasts on FM until 2031. The proposed extension of the scheme will allow to continue to support and maintain the unique local diversity within audio- and video-based media during the digital transformation.

### 3.4 National legal basis

- (25) The national legal basis of the notified measure will be the amended Regulation on grants to local broadcasting.<sup>12</sup>

### 3.5 Beneficiaries

- (26) The beneficiaries are companies with a license to provide local radio or TV broadcasting, registered broadcasters that mainly provide content targeted at a local audience, national associations for local broadcasters, companies with an operating license in digital networks for the transmission of local radio, as well as providers of on-demand audio-visual services and on-demand podcast services that mainly offer content targeted at a local audience.

### 3.6 Budget and duration

- (27) The budget of the scheme is decided annually by the Parliament, as part of the normal budget process. The annual budget for 2024 is NOK 23 million. The annual budget for 2025 and 2026 shall be adjusted for increases in wages and prices.

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<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid*, chapter 12.10.5.

<sup>11</sup> The Norwegian Media Authority's report on the media support schemes (2021), chapter 5.

<sup>12</sup> Regulation on grants to local broadcasting (FOR-2016-02-19-166).

## **4 Presence of State aid**

### **4.1 Introduction**

- (28) Article 61(1) of the EEA Agreement reads as follows: “Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”
- (29) 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.
- (30) In its initial decision, ESA concluded that the scheme constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.<sup>13</sup> The prolongation of the scheme, and the notified amendments, do not alter the previous assessment. The measures therefore constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

## **5 Lawfulness of the aid**

- (31) 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.”
- (32) The Norwegian authorities have notified the measure and have yet to let it enter into force. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

## **6 Compatibility of the aid**

### **6.1 Introduction**

- (33) In derogation from the general prohibition of State aid laid down in Article 61(1) of the EEA Agreement, aid may be declared compatible if it can benefit from one of the derogations enumerated in the Agreement. The Norwegian authorities invoke Article 61(3)(c) of the EEA Agreement as the basis for the assessment of the compatibility of the aid measure.
- (34) Article 61(3)(c) of the EEA Agreement provides that ESA may declare compatible “aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”. Therefore, in order to declare the aid compatible, first, the aid must be intended to facilitate the development of certain

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<sup>13</sup> ESA Decision No 123/20/COL.

economic activities or of certain economic areas and, second, the aid must not adversely affect trading conditions to an extent contrary to the common interest.<sup>14</sup>

- (35) ESA has already found the scheme to be compatible with Article 61(3)(c) of the EEA Agreement.<sup>15</sup> ESA considers that the notified amendments do not affect the assessment of the compatibility of the aid scheme with the functioning of the EEA Agreement, as carried out in the initial decision.
- (36) As acknowledged by ESA in the initial decision, the scheme facilitates the development of local broadcasting services, contributing to media pluralism and freedom of speech, and to strengthening local broadcaster's democratic function in the society.
- (37) As regards the inclusion of on-demand services in the scheme (see section 3.2), ESA notes that, due to market changes, more consumption of sound and moving images is non-linear, and on-demand media is likely to gain increased importance in the future. Hence, local podcasts and local audio-visual on-demand services are important contributions to local media diversity, with particular appeal to younger target groups. ESA further notes that small local media companies generally face significant challenges in the transition to the digital market, and in generating commercial income. The inclusion of on-demand audio-visual media services and on-demand podcast services is therefore likely to further strengthen the measure's contribution to promote media pluralism and media diversity.
- (38) Based on the above, ESA concludes that the inclusion in the scheme of on-demand services is necessary and appropriate to achieve the objectives of the scheme.
- (39) As regards the requirement that beneficiaries must have a responsible editor (see section 3.3), ESA notes that it may help to ensure that the beneficiaries operate in compliance with applicable laws, ethical rules and journalistic principles, thereby strengthening the democratic function of local broadcasters and providers of on-demand media services.
- (40) ESA further notes that the same requirement is applicable under other media support schemes approved by ESA.<sup>16</sup> The proposed amendment does not affect the character or scope of the aid and does not alter ESA's previous assessment of the scheme, as set out in the initial decision.
- (41) With respect to the proposed increase in the maximum aid amount for radio stations directed at ethnic and linguistic minority groups (see section 3.4), ESA notes that, although substantially increased, from NOK 75 000 to NOK 200 000, the maximum aid amount per radio station remains very limited. As for the other aid categories under the scheme, the maximum aid amounts and aid intensities remain unchanged.

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<sup>14</sup> Judgment of 22 September 2020, *Austria v Commission (Hinkley Point C)*, C-594/18 P, EU:C:2020:742, paragraphs 18–20.

<sup>15</sup> ESA Decision No 123/20/COL.

<sup>16</sup> See for instance Decision No 61/18/COL Innovation and Development Scheme for news and current affairs media, and Decision No 112/14/COL Production grant scheme for news and current affairs media.

- (42) In conclusion, ESA considers that the notified increase does not alter ESA's previous assessment and that the scheme, as amended, remains proportionate.
- (43) As regards the prolongation of the scheme until 31 December 2029, ESA notes that local radio will be allowed to continue with analogue broadcasts on FM until 2031. The digital transition is therefore likely to continue beyond 2029. Hence, ESA considers the notified prolongation to be justified.
- (44) For State aid to be compatible with the functioning of the EEA Agreement, the negative effects of the aid measure in terms of distortion of competition and impact on trade between Contracting Parties must be limited and outweighed by the positive effects in terms of contribution to the facilitation of the development of economic activities or areas.
- (45) ESA notes, on the positive side of the balance, that the measure contributes to the development of the media sector, in particular local broadcasters and providers of on-demand media services targeted at a local audience. Local media play an important part in ensuring media pluralism and diversity, which in turn may strengthen media's democratic function in society.
- (46) As regards the distortive effect of the measures and their effect on trade between the Contracting Parties, ESA notes that the aid is targeted at local broadcasters and providers of on-demand services that mainly offer content targeted at a local audience. Given the relative size of the media concerned and the local nature of their services, as well as their limited outreach outside Norway, the overall effect on trade should be limited. Furthermore, the characteristics of the measure, including the limited budget and the relatively low maximum cap of NOK 1.5 million per beneficiary per year, limit the distortion of competition and trade.
- (47) Accordingly, ESA finds that the positive effects of the measures outweigh the possible distortions of competition and adverse impact on trade.

## 6.2 Transparency

- (48) The Norwegian authorities have confirmed that any aid award exceeding EUR 100 000 will be published in the [national transparency register](#).
- (49) Therefore, the measures fulfil the transparency requirements.

## 7 Conclusion

- (50) On the basis of the foregoing assessment, ESA considers that the notified measures constitute State aid with the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that the aid is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c), it has no objections to the implementation of the measures.
- (51) 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,

Arne Røksund  
President  
Responsible College Member

Stefan Barriga  
College Member

Árni Páll Árnason  
College Member

For Melpo-Menie Joséphidès  
Countersigning as Director,  
Legal and Executive Affairs

*This document has been electronically authenticated by Arne Roeksund, Sigrun Ingibjorg Gisladdottir.*