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Decision No 123/24/COL

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

Subject: Amendments to the Norwegian production grant scheme for news and current affairs media

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the amendments to the production grant scheme for news and current affairs media (“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 objections¹ 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 23 August 2024.²

3 Description of the measures

3.1 Background

- (3) On 7 December 2022, ESA approved by Decision No 220/22/COL (“the initial decision”) a production grant scheme for news and current affairs media. 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 1 January 2029.
- (4) The production grant for news and current affairs media is the largest media grant scheme in Norway, with a budget of approximately NOK 424 million (in 2024). The production grant is one of several direct and indirect aid measures currently in place to fulfil Norwegian media policy objectives. The scheme aims to contribute to media pluralism, freedom of expression and the strengthening of the democratic function of newspapers in Norway. The existing scheme, managed by the Norwegian Media Authority, was set up to support both local media in markets that are too small to be sustainable and secondary nationwide media that represent views and interests that are different from those of their leading competitors.

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 Document No 1477785.

- (5) Reference is made to the initial decision for more details on the scheme.
- (6) Given the development in the Norwegian economy following approval of and the entry into force of the current scheme, the Norwegian authorities have found it necessary to make some minor amendments to the scheme.

3.2 The notified amendments to the scheme

3.2.1 Introduction

- (7) The Norwegian authorities have notified the following amendments to the scheme, as described further below:
 - i. Adaptation of definitions in line with the current number of counties in Norway.
 - ii. Introduction of a requirement that editors must follow press ethical standards.
 - iii. Removal of the requirement of paper publishing under the double fixed base grant.
 - iv. Adjustment of the maximum aid amount in line with inflation.
 - v. Adjustment of the operating income thresholds for reduction of grants, in line with inflation.
 - vi. Clarification of the rules for distribution of funds released as a result of reduction of individual aid.
 - vii. Adjustment of the transitional rules for media losing their claim to grants as a result of the changed eligibility criteria introduced in 2023.

3.2.2 Adaptation in line with the current number of counties

- (8) As of 1 of January 2024, the number of counties in Norway increased from 11 to 15.
- (9) Under the current scheme, the number of counties has relevance for the definition of “national secondary medium” and “national niche medium” respectively. To qualify as a “national secondary medium”, the medium must have at least 500 of its subscriptions in a minimum of four different counties. To qualify as a “national niche medium”, the medium must have at least 200 of its subscriptions in a minimum of four counties. This requirement is meant to ensure that both national secondary media and national niche media maintain a geographical spread.
- (10) As the number of counties in Norway has increased, the Norwegian authorities consider that the number of counties in the abovementioned definitions, must be adjusted from four to five counties. The amendment is not expected to affect the scope of beneficiaries of the scheme.

3.2.3 Editors must follow press ethical standards

- (11) Under the current scheme, beneficiaries are required to have an editor in accordance with the Media Liability Act. However, to ensure that the beneficiaries follow good press practise, the Norwegian authorities intend to include, as an explicit condition in the scheme, that the editor must follow generally accepted press ethical standards. According to the Norwegian authorities, the proposed amendment is in every practical term just a clarification of what already applies under the scheme. Currently, all grant recipients adhere to the Norwegian Editor's Placard, so the amendment will in practice not entail the criteria becoming stricter.

3.2.4 Removal of the requirement of paper publishing, and inclusion of Svalbard, under the double fixed base grant

- (12) Under the current scheme, leading and sole media with a publishing site in one of the three northernmost counties, Nordland, Troms and Finnmark, receive a double fixed base grant if they are published on paper in a minimum of 48 weeks a year.
- (13) The Norwegian authorities intend to include media with a publishing site in Svalbard under the double fixed base grant.³
- (14) Furthermore, the Norwegian authorities intend to remove the requirement of paper publishing. The grant scheme has been platform neutral since 2014, and so the Norwegian authorities consider this requirement to be outdated.
- (15) Although removing the requirement of paper publishing, the double fixed base grant for media outlets in Nordland, Troms and Finnmark will be maintained.
- (16) According to the Norwegian authorities, northern Norwegian media outlets are dependent on receiving the double fixed base grant, as the conditions are less favourable in this part of Norway, e.g. limited income opportunities, higher relative operating costs, and lower population density, as compared to less rural parts of Norway. According to the Norwegian authorities, the double fixed base grant may strengthen the presence of local media, which could in turn help prevent depopulation, which is currently a problem in the northern part of Norway.
- (17) At the same time, according to the Norwegian authorities, maintaining media pluralism and strengthening local media in Northern Norway has become more important than ever, both for geopolitical- and security policy reasons, due to the region's proximity to Russia, making it particularly vulnerable to e.g. Russian disinformation campaigns.
- (18) For the above reasons, the Norwegian authorities consider it important to uphold the double fixed base grant for media outlets in Nordland, Troms and Finnmark, even if the requirement of paper publishing is abolished.
- (19) According to the Norwegian authorities, the number of media outlets that will be eligible for a double fixed base grant is low, and the proposed amendment is expected to lead to a more level playing field between paper and online media.

3.2.5 Adjusting the maximum aid amounts in line with inflation

- (20) Under the current scheme, the maximum aid amount is NOK 40 million per company per year. The maximum aid amount for a media company that owns a national niche medium is NOK 15 million.
- (21) Since the approval of the initial scheme in 2022, the rate of inflation has steadily risen in Norway. Based on calculations from the Norwegian Ministry of Finance and Statistics Norway, the Norwegian authorities estimate that the maximum aid amounts should be adjusted by approximately 10% to account for inflation in 2023

³ Svalbard is outside the geographical scope of the EEA Agreement and is therefore not subject to EEA State aid rules.

and the expected inflation the coming years.⁴ Therefore, the maximum aid amounts will be increased to NOK 45 million and NOK 17 million respectively.

3.2.6 *Adjusting the operating income thresholds for reduction of grants, in line with inflation*

- (22) Under the current scheme, grants are reduced if the media company's operating income, excluding grants, exceeds NOK 225 million in the last accounting year, or NOK 675 million over the last three accounting years. For media that exceed the threshold, there will be a gradual reduction in grants.
- (23) As for the maximum aid amounts, the Norwegian authorities intend to adjust the income thresholds by approximately 10%, to NOK 250 million and NOK 750 million respectively, to account for the recent and expected inflation in Norway.

3.2.7 *Funds released as a result of reduction of aid*

- (24) According to Section 15 of the current Regulation, funds released as a result of reductions in grants to a media company shall be distributed between other eligible media companies. The wording of the provision is however unclear. While the first part of the provision sets out that the released funds should be allocated between the different media categories under the grant scheme, it follows from the second part of the provision that the funds should be evenly distributed between the other media within the same category.
- (25) The Norwegian authorities suggest an amendment to the provision to clarify that funds that are released as a result of grant reductions, are distributed equally between media *within* the relevant grant category. This amendment will codify the already existing practice and will ensure consistency between rules and practice.

3.2.8 *Transitional rules for media losing their claim to grants*

- (26) The current scheme contains transitional rules for media companies which, due to the changes introduced to the scheme in 2023 (subject to ESAs previous decision), would no longer meet the eligibility criteria and therefore no longer be entitled to aid. The transitional rules entailed that such companies would be eligible for a reduced grant for a transitional period of three years, allowing them sufficient time to adapt their business to the new situation.
- (27) However, due to the way the transitional rule was designed, the general profit limitations applicable under the scheme, which exclude undertakings with a profit exceeding 2 million in the last year or 6 million over the last three years, from receiving aid, do not apply to the reduced transitional grant. As a consequence, a news medium can make a significant profit and at the same time receive support for a three-year period. The Norwegian authorities have explained that exempting the transitional aid from the general profit limitations was unintentional and may weaken the legitimacy of the scheme.

⁴ In 2023, the rate of inflation in Norway was 5.5%. As the rate of inflation in Norway for 2024 (and the coming years) is still uncertain, the Norwegian authorities propose to adjust the aid amount somewhat in excess of the current rate to compensate for any changes.

- (28) Therefore, the Norwegian authorities intend to amend the transitional rule so that undertakings with profits exceeding the profit limitations applicable under the scheme will no longer be eligible for a reduced transitional grant.

3.3 National legal basis

- (29) The national legal basis of the notified measures is Act No. 153 of 18 December 2020 on economic support to the media, and the Regulation on production grant for news and current affairs media.

3.4 Budget and duration

- (30) The yearly budget of the scheme is decided annually by the Parliament. For 2024, the budget is approximately NOK 424 million.

4 Presence of State aid

4.1 Introduction

- (31) 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.”
- (32) 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.
- (33) In its initial decision, ESA concluded that the scheme constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.⁵ The notified amendments do not alter the previous assessment, as they will increase the aid amounts and form an integral part of the scheme. The measures therefore constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

5 Lawfulness of the aid

- (34) 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.”
- (35) The Norwegian authorities have notified the measures and have yet to let them 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

- (36) 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

⁵ ESA Decision No 123/20/COL.

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 measures.

- (37) 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 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.⁶
- (38) In the initial decision, ESA found the scheme to be compatible with Article 61(3)(c) of the EEA Agreement.⁷ 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.⁸
- (39) As acknowledged by ESA in the initial decision, the scheme contributes to maintaining a diversity in written news and current affairs media throughout Norway, with a broad editorial content targeted to the general public. Furthermore, it promotes independent journalism characterised by high quality, especially news and current affairs media in markets that are too small to be sustainable or which are alternatives to the leading media in the different media markets. The notified amendments do not affect the general features or the objectives of the scheme.
- (40) As regards the adjustment of the maximum aid amounts from NOK 40 million and NOK 15 million to NOK 45 million and NOK 17 million respectively, ESA notes that the increase is a mere adjustment in line with the inflation experienced in Norway since the adoption of the initial decision, as well as the expected inflation for the coming years, and so the value of the aid remains at the same level as in the initial scheme.
- (41) The same applies to the adjustment of the operating income thresholds from NOK 225 million to NOK 250 million and from NOK 675 million to NOK 750 million. Hence, ESA concludes that these adjustments do not affect ESA’s previous assessment, and that the scheme remains necessary and proportionate.
- (42) Regarding the removal of the requirement of paper publishing as a condition for the double fixed base grant in Nordland, Troms and Finnmark, ESA notes that the scheme has been platform neutral since 2014, and so the change is consistent with the underlying principles of the scheme. It is also in line with the general developments in the media market and the increasing use of digital services. According to the Norwegian authorities, it is important to uphold the double fixed base grant for media outlets in Northern Norway, even without the requirement of paper publishing. Media companies in this part of Norway are dependent on

⁶ Judgment of 22 September 2020, *Austria v Commission (Hinkley Point C)*, C-594/18 P, EU:C:2020:742, paragraphs 18–20.

⁷ ESA Decision No 123/20/COL.

⁸ ESA notes that some of the notified amendments are modifications of a purely formal or administrative character which are not notifiable, cf. Article 4 of ESA’s decision No 195/04/COL. However, some of the amendments, e.g. the increase in aid amounts, constitute an alteration in the meaning of Article 4(1) of ESA Decision No. 195/04/COL, and are therefore notifiable.

receiving the double fixed base grant due to less favourable conditions than in other parts of the country. Moreover, in view of the Norwegian authorities' concerns as regards depopulation and disinformation campaigns, and the importance of strengthening the presence of local media in Northern Norway to counteract this, ESA finds it appropriate to maintain the double fixed base grant for Northern Norway.

- (43) 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.
- (44) ESA notes, on the positive side of the balance, that the measures contribute to the development of the media sector, and in maintaining a diversity in written news and current affairs media through Norway, with a broad editorial content targeted to the general public. Furthermore, the measures promote independent journalism characterised by high quality, especially news and current affairs media in markets that are too small to be sustainable or which are alternatives to the leading media in the different media markets. The main objectives of the measures are to contribute to media pluralism and freedom of speech, and to strengthen the written news media's democratic function in the society.
- (45) As regards the distortive effect of the measures and their effect on trade between the Contracting Parties, ESA notes, as also recorded in the initial decision, that the type of news and current affairs media covered by the notified scheme are in general subject to very limited cross-border trade due to the inherent national character of such products. With a particular view to the fact that the Norwegian language area is small, Norwegian written news and current affairs media, whether printed or online, cannot, in general, be considered substitutable with foreign news and current affairs media. Furthermore, ESA found in the initial decision that the potential negative effects on competition must be considered very limited. The notified amendments give no reason to deviate from that conclusion.
- (46) Accordingly, ESA finds that the positive effects of the measures outweigh the possible distortions of competition and adverse impact on trade.

7 Conclusion

- (47) 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.
- (48) 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, acting under Delegation Decision No 107/24/COL,

For Arne Røksund
President
Responsible College Member

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

This document has been electronically authenticated by Stefan Barriga, Sigrun Ingibjorg Gisladdottir.