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Case No: 87382
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Decision No 224/21/COL

Ministry of Trade, Industry and Fisheries
PO Box 8090 Dep
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Norway

Subject: COVID-19 amendments to scheme for cancelled and downscaled cultural events

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the notified amendments to the existing COVID-19 scheme for cancelled and downscaled cultural events (“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)(b). ESA has based its decision on the following considerations.

2 Procedure

- (2) The Norwegian authorities notified the measures on 24 September 2021.²

3 Description of the measures

3.1 Background

- (3) As recognised in the Commission’s Communication on the Temporary Framework for state aid measures to support the economy in the current COVID-19 outbreak (“the [Temporary Framework](#)”)³, the COVID-19 outbreak has caused a major shock to global and national economies.
- (4) By [Decision No 071/21/COL](#), ESA approved a compensation scheme for undertakings affected by cancellations or postponements of cultural events due to the COVID-19 outbreak for the compensation period 1 January to 30 June 2021 (“the initial decision”). The legal basis for this compensation scheme is Article 61(3)(b) of the EEA Agreement. The scheme’s compatibility was assessed in line with Section 3.1 of the Temporary Framework.

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 Nos 1229151, 1229153 and 1229155.

³ Communication from the Commission – Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak of 19 March 2020, OJ C 91, 20.3.2020, p. 1, amended five times, (i) on 3.4.2020, OJ C 112, 4.4.2020, p. 1, (ii) on 8.5.2020, OJ C 164, 13.5.2020, p. 3, (iii) on 29.6.2020, OJ C 218, 2.7.2020, p. 3, (iv) on 13.10.2020, OJ C 340, 13.10.2020, p. 1, and (v) on 28.01.2021, OJ C 34, 01.02.2021, p 6.

- (5) Many of the containment measures that were in force during the compensation period 1 January to 30 June 2021 are still in effect, even though the national recommendation is no longer to cancel or postpone all events.⁴ Most events in Norway are scaled down, and some events are still cancelled or postponed due to regulations and recommendations put in place by the Norwegian authorities.
- (6) Containment measures, that have been in force since July, include e.g. maximum number of attendants at cultural events as well as rules concerning distance between members of the audience.⁵ The current containment measures result in a significant shortage of funds for organisers of cultural events and subcontractors to cultural events. The loss of income comes on top of losses suffered in 2020 and in the first half of 2021.
- (7) The Norwegian authorities have confirmed that, aside from the specific amendments described below, the scheme remains as described in [Decision No 071/21/COL](#).

3.2 The measures – amendments to the scheme

3.2.1 Two new compensation periods

- (8) The Norwegian authorities intend to introduce two new compensation periods; (i) from 1 July until 31 August 2021, and (ii) from 1 September until 31 October 2021. Therefore, costs and losses incurred from 1 July 2021 until 31 October 2021 will be compensated, provided that there were/are in place recommendations or restrictions on cultural events.

3.2.2 Higher maximum compensation amount to organisers of festivals

- (9) The Norwegian authorities intend to increase the currently applicable maximum compensation amount for organisers of festivals held yearly or biannually that last at least two days. Those organisers may receive up to NOK 7 million (approx. EUR 700 000) per compensation period, which is NOK 3.5 million higher than the previously applicable maximum compensation amount per compensation period. According to the Norwegian authorities, the loss of income suffered by organisers of festivals is concentrated to a very short period of time, while their expenses are accumulated throughout the year.

3.2.3 Amendment to the limit on profits for self-employed persons

- (10) The Norwegian authorities intend to lower the amount that self-employed persons (organisers and subcontractors) can have as an ordinary positive profit before tax from NOK 108 242 (approx. EUR 11 000) to NOK 72 161 (approx. EUR 7 000) per compensation period.

3.2.4 Budget

- (11) The budget of the scheme is NOK 425 million (approx. EUR 41 million).

3.3 National legal basis

- (12) The legal framework for the measures will be set out in the Regulation on a temporary compensation scheme for cancelled, closed or downscaled cultural

⁴ Idrett, kultur og frivillighet – Helsedirektoratet.

⁵ https://www.regjeringen.no/no/tema/Koronasituasjonen/smittevernveiledere-for-kultur-idrett-og-frivillighetsfeltet/praktisering-av-smitteverniltak-for-kultur-idrett-og-frivillighetsfeltet-sporsmal-og-svar/id2702872/#tocNode_1

events in the period 1 July to 31 October 2021 as a consequence of the COVID-19 outbreak (“the Regulation”).

3.4 Duration

- (13) The measures are set to come into force following ESA’s approval. The Norwegian authorities have confirmed that no aid will be granted under the scheme after 31 December 2021.

4 Presence of state aid

- (14) 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.”
- (15) 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.
- (16) ESA has concluded that the scheme constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. There is nothing in the notification to indicate that this conclusion should be altered with respect to the measures. On this basis, ESA concludes that the measures constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

5 Lawfulness of the aid

- (17) 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.”
- (18) 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

- (19) ESA can declare state aid compatible with the functioning of the EEA Agreement under its Article 61(3)(b) of the EEA Agreement, “to remedy a serious disturbance in the economy of an EC Member State or an EFTA State”.
- (20) The disturbance must affect the whole or an important part of the economy of the state concerned, and not merely that of one of its regions or part of its territory. This is in line with the requirement to interpret exceptions, such as Article 61(3)(b) of the EEA Agreement, strictly.
- (21) In the context of the current COVID-19 outbreak, the Commission adopted the Temporary Framework that sets out temporary state aid measures that it

considers compatible under Article 107(3)(b) TFEU, which corresponds to Article 61(3)(b) of the EEA Agreement. The Commission confirms that the current situation, specifically the effects of the containment measures adopted by national authorities on their economies, justify that aid can be granted on the basis of Article 107(3)(b) TFEU. This type of aid is available for a limited period to remedy the liquidity shortage faced by undertakings to ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability.

- (22) In order to ensure uniform application of the state aid rules throughout the EEA, in line with the objective of homogeneity established in Article 1 of the EEA Agreement, ESA applies the compatibility conditions set out in the Temporary Framework to state aid granted by the EEA EFTA States under Article 61(3)(b) in the context of the COVID-19 outbreak.
- (23) In the initial Decision, ESA concluded that the scheme, on the basis of the Temporary Framework, was compatible with Article 61(3)(b) of the EEA Agreement.
- (24) The measures leave the scheme unaltered, apart from the amendments set out in section 3.2 above.
- (25) First, the amendment related to the festivals addresses a certain problem identified by the Norwegian authorities, namely the loss of income suffered by organisers of festivals being concentrated to a very short period of time, while their expenses are accumulated throughout the year. The amendment compensates organisers of festivals in an objective and non-discriminatory way. The amendment does not affect the underlying rationale of the initial scheme.
- (26) Second, the remaining amendments, namely the new compensation periods, the lowered limit on profits for self-employed persons, and the increased budget, are in line with the Temporary Framework and compatible with Article 61(3)(b). These amendments do not affect the underlying rationale of the initial scheme.
- (27) The proposed amendments do not alter ESA's previous conclusion on the scheme being necessary, appropriate and proportionate to remedy a serious disturbance in the economy of an EEA EFTA State, and that the requirements laid down in Section 3.1 of the Temporary Framework are complied with.
- (28) Against this background, ESA considers that the measures do not affect the compatibility assessment of the scheme, as set out in the initial decision.

7 Conclusion

- (29) On the basis of the foregoing assessment, ESA considers that the measures constitute state aid with the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that aid is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(b), it has no objections to the implementation of the measures.
- (30) The Norwegian authorities have confirmed that the notification does not contain any confidential information.

For the EFTA Surveillance Authority,

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