

## EFTA SURVEILLANCE AUTHORITY DECISION

No 309/13/COL

of 16 July 2013

**on the compatibility with EEA law of measures to be taken by Norway pursuant to Article 14 of Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)**

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Act referred to at point 5p of Annex XI to the EEA Agreement, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services<sup>(1)</sup> (the "Act"), and in particular Article 14(2) thereof,

Whereas:

- (1) By letter dated 22 April 2013, received by the EFTA Surveillance Authority ("the Authority") on 23 April 2013, Norway notified the Authority of measures to be taken pursuant to Article 14(1) of Directive 2010/13/EU.
- (2) The EFTA Surveillance Authority verified, within a period of three months from this notification, that such measures are compatible with EEA law, in particular with regard to the proportionality of the measures and the transparency of the national consultation procedure.
- (3) In its verification, the Authority considered the available data on the Norwegian media market.
- (4) The list of events of major importance for society included in the Norwegian measures was drawn up in a clear and transparent manner. Furthermore, a far-reaching consultation had been launched in Norway in this regard.
- (5) The Authority was satisfied that the events listed in the Norwegian measures met at least two of the following criteria considered to be reliable indicators of the importance of events for society: (i) a special general resonance within the EEA EFTA State, and not simply a significance to those who ordinarily follow the sport or activity concerned; (ii) a generally recognised and distinct cultural importance for the population in the EEA EFTA State, in particular as a catalyst of cultural identity; (iii) involvement of the national team in the event concerned in the context of a competition or tournament of inter-

national importance; and (iv) the fact that the event has traditionally been broadcast on free-to-air television and has commanded a large television audience.

- (6) A number of events listed in the Norwegian measures, such as the Olympic Games as well as the Men's World Cup and the Men's European Football Championship, both including qualifying games with Norwegian participation, fall within the category of events considered of major importance for society, as referred to explicitly in recital 49 of Directive 2010/13/EU.
- (7) The summer Olympic Games is an event that attracts enormous interest in Norway as Norwegian athletes have always participated in a wide range of individual and group disciplines. The event has a special resonance among the general public in Norway, as it interests audiences who would not normally follow it. The summer Olympic Games were traditionally broadcast on free-to-air television and commanded high viewing figures in Norway.
- (8) The winter Olympic Games is an event even more popular and enjoys very high viewing figures. A large number of Norwegian athletes participate in the winter Olympic Games in both individual and group disciplines. The event has traditionally been broadcast on free-to-air television and commanded high viewing figures in Norway. The event is watched not only by viewers that ordinarily follow the sports concerned.
- (9) The Men's World Cup and the Men's European Football Championship, both in their entirety and including qualifying games with Norwegian participation, are among the most popular sports events in Norway. The Norwegian public and media take great interest in the Norwegian team's qualifying matches as well as the matches in the final round, especially the final matches. The events have traditionally been broadcast on free-to-air television and have commanded a large television audience. As the matches between other countries in the final round may affect the matches that Norway may play as well as the overall result, they also enjoy a special resonance in Norway.
- (10) In Norway, there is a strong interest in local football clubs. The Men's Norwegian Football Cup Final has traditionally been broadcast on free-to-air television. The high viewing figures that the event has enjoyed so far

<sup>(1)</sup> OJ L 95, 15.4.2010, p. 1.

indicate a significant public interest in this event, also outside of the audience that usually follows the matches of the local football clubs.

- (11) The Women's World and European Handball Championships (the final round tournaments) are events traditionally broadcast on free-to-air television with significant viewing figures. The Norwegian women's national handball team has enjoyed great success over a long period which led to general resonance in Norway, also among audiences that would not normally follow this sport. The matches between other countries in the final rounds of both events affect the matches that the Norwegian national team may play as well as the overall result.
- (12) The FIS Nordic World Ski Championships is a popular event in Norway. Cross-country skiing is deeply rooted in the Norwegian culture and constitutes an important element of the Norwegian cultural heritage. The event has a generally recognised, distinct cultural importance for the Norwegian population and it has traditionally been broadcast on free-to-air television with large audience figures. The large viewing audience attracted by this event shows that the event and its outcome have a special general resonance in Norway and are not simply of significance to those who ordinarily follow the sport.
- (13) The FIS Alpine World Ski Championships is a popular event in Norway. Alpine skiing is deeply rooted in Norwegian culture and constitutes an important element of the Norwegian cultural heritage. The FIS Alpine Ski Championships can therefore be regarded as having a generally recognised, distinct cultural importance for the Norwegian population. Norway has had a number of winning alpine skiers which greatly impacted the interest for the discipline in Norway. The event and its outcome have therefore a special general resonance in Norway and not simply to those who ordinarily follow the sport.
- (14) The Holmenkollen FIS World Cup Nordic is an annual event in Holmenkollen, Oslo and forms part of the FIS World Cup Nordic. The event is one of the most important annual sports events in Norway, has a long tradition and it can be regarded as having a generally recognised, distinct cultural importance for the Norwegian population. The event has also traditionally been broadcast on free-to-air television and has commanded a large viewing audience. Because of the cultural significance of the event, the outcome of the event has a special general resonance in Norway, even for audiences that do not usually follow this discipline.
- (15) The Biathlon World Championships is an important winter event in Norway and has a special resonance and wide interest in the population, also for those who do not normally follow the disciplines, as a part of the Norwegian's cultural identity and ski heritage. The event has traditionally been broadcast on free-to-air television and has commanded a large television audience.
- (16) The Norwegian measures appear proportionate to justify, by the overriding reason of public interest in ensuring wide public access to broadcasts of events of major importance for society, the derogation from the fundamental freedom to provide services laid down in Article 36 of the Agreement on the European Economic Area.
- (17) The Norwegian measures are also compatible with EEA competition rules in so far as the definition of the qualifying broadcasters for the broadcasting of listed events relies on objective criteria (required coverage), which allow potential competition for the acquisition of the rights to broadcast these events. In addition, the number of listed events is not so disproportionate as to distort competition on the downstream free television and pay television markets.
- (18) The general proportionality of the Norwegian measures is supported by several factors. Firstly, the introduction of the 90 % threshold of the required potential coverage of the population for qualifying broadcasters increases the proportionality of the measures, in so far as it increases the number of broadcasters who potentially qualify. Secondly, the number of events included in the list is proportionate. Thirdly, a mechanism has been introduced for the resolution of disputes between broadcasters as regards the payment of fair compensation for broadcasting rights. Furthermore, the Norwegian measures provide for appropriate arrangements in situations where the events listed are purchased by non-qualifying broadcasters, in order to ensure a system for relicensing of exclusive rights to qualifying broadcasters. Furthermore, the Norwegian measures anticipate situations in which the rights to the events listed are purchased by a non-qualifying broadcaster, and no request has been received from a qualified buyer, in order to ensure that the non-qualifying broadcaster is able to exercise its rights. Finally, the entry into force of the final Norwegian is postponed to 1 July 2014 in order to ensure that any contract negotiations made before that date are not adversely effected.
- (19) The Authority communicated the measures notified by Norway to the other EEA EFTA States and sought the opinion of the EFTA Contact Committee established pursuant to Article 29 of Directive 2010/13/EU. The Committee adopted a favourable opinion.

HAS DECIDED AS FOLLOWS:

*Article 1*

The measures to be adopted by Norway pursuant to the Act referred to at point 5p of Annex XI to the EEA Agreement, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (the "Act"), and in particular Article 14(1) thereof, notified to the Authority pursuant to Article 14(2) of the Act on 22 April 2013 and received by the Authority on 23 April 2013, are compatible with EEA law.

*Article 2*

Norway shall communicate to the Authority the measures as finally adopted. The Authority shall publish these measures in

the EEA Supplement to the *Official Journal of the European Union* in accordance with Article 14(2) of Directive 2010/13/EU.

*Article 3*

This Decision is addressed to Norway.

Done at Brussels, 16 July 2013.

*For the EFTA Surveillance Authority*

Sabine MONAUNI-TÖMÖRDY  
*College Member*

Xavier LEWIS  
*Director*

## ANNEX

**Regulation on amendments to Regulation no 153 of 28 February 1997 relating to broadcasting and audiovisual media services**

Adopted by Royal Decree of 9 August 2013 pursuant to Section 2-8 of Act no 127 of 4 December 1992 relating to broadcasting and audiovisual media services. Submitted by the Ministry of Culture.

## I

Regulation no 153 of 28 February 1997 relating to broadcasting and audiovisual media services is amended as follows:

The current provisions in Sections 5-1 and 5-2 are hereby revoked.

New Section 5-1 shall read:

Section 5-1 Events of major importance to society

The following events are to be regarded as events of major importance to society:

- a) The Summer and Winter Olympic Games in full, organised by the International Olympic Committee (IOC)
- b) The Men's World Football Championships in full, including qualifying games with Norwegian participation, organised by the Fédération Internationale de Football Association (FIFA)
- c) The Men's European Football Championships in full, including qualifying games with Norwegian participation, organised by the Union of European Football Associations (UEFA)
- d) The Women's World Handball Championships in full, organised by the International Handball Federation (IHF)
- e) The Women's European Handball Championships in full, organised by the European Handball Federation (EHF)
- f) The Men's Football Cup Final, organised by the Norwegian Football Federation (NFF)
- g) The Nordic World Ski Championships in full, organised by the International Ski Federation (FIS)
- h) The Alpine World Ski Championships in full, organised by the International Ski Federation (FIS)
- i) The Holmenkollen FIS World Cup Nordic
- j) The Biathlon World Championships in full, organised by the International Biathlon Union (IBU)

New Section 5-2 shall read:

Section 5-2 Television channels that are received by a substantial portion of the viewers on free television

A television channel is received by a substantial portion of the viewers on free television if the channel may be received by at least 90% of viewers with no additional costs apart from the licence fee and/or basic package fee.

New Section 5-3 shall read:

Section 5-3 Procedural provisions and setting of market price

- a) A television channel that does not meet the conditions in Section 5-2, and that has acquired an exclusive right to broadcast an event listed in Section 5-1, is obliged to provide a written offer for resale of the right to any television channel that meets the requirements in Section 5-2 and that requests the right to broadcast the event.
- b) An offer pursuant to letter a must be given no later than one month after receipt of a request from a television channel that meets the conditions in Section 5-2.
- c) A television channel that meets the conditions in Section 5-2, and that has received an offer pursuant to letter a must within one month after receipt of the offer respond whether the offer is accepted or not.
- d) If the parties cannot reach agreement on remuneration for the broadcasting rights to an event listed in Section 5-1, any of the parties may no later than six months before the event takes place request that the Media Authority set the remuneration for the rights to the event. The remuneration for the broadcasting rights shall be set in accordance with market principles. The Media Authority shall issue guidelines on the stipulation of remuneration for the resale of rights to events listed in Section 5-1 according to market principles.

- e) A television channel that does not meet the conditions in Section 5-2 may only exercise its exclusive right to an event listed in Section 5-1 if no requests pursuant to letter a) have been received at least ten months before the event taking place, or no television channels that meet the conditions in Section 5-2 wish to acquire the broadcasting rights at market price.
- f) The time limits in this provision shall not apply if an exclusive right to a television broadcast of an event listed in Section 5-1 is sold by a rights-holder to a television channel less than ten months in advance of the event listed in Section 5-1.

New Section 5-4 shall read:

Section 5-4 Conditions for the deferred or partial broadcasting of the event

A television channel that has acquired an event of major importance for society in accordance with Section 5-3, shall broadcast the entire event live.

The television channel may nevertheless broadcast parts of the event live, or wholly or partially deferred if:

- a) the event takes place at night between 00:00 and 06:00 GMT +1,
- b) the event consists of several parallel events, or
- c) other factors indicate that it would be in the interests of the public that the event is broadcast partly live, or wholly or partially deferred.

The current provision in Section 5-3 becomes the new Section 5-5, and shall read:

Section 5-5 Reporting of acquisitions

A television channel that acquires exclusive rights to all or parts of events that are listed in Section 5-1 or the lists of events of major importance to society in other EEA countries that have been approved by the European Commission or the EFTA Surveillance Authority and published in the Official Journal and the EEA Supplement to the Official Journal, shall immediately report such acquisitions to the Norwegian Media Authority.

The current provision in Section 5-4 becomes the new Section 5-6.

Section 10-2 first paragraph shall read:

For violations of provisions in Chapter 3 of the Act or rules pursuant to Chapter 3, other than those mentioned in Section 10-1 of this Regulation, violation of Section 6-4 of the Act, or Sections 1-4, 2-5, 2-6, 5-3, 5-4, 5-5 and 7-6 No 1 of this Regulation, the Norwegian Media Authority may impose a financial penalty based on a discretionary assessment. The same applies to a violation of licence conditions that include clearly defined obligations stipulated pursuant to Section 2-1, second paragraph of the Act.

Section 10-3 first paragraph shall read:

For violations of provisions in Section 2-1 first and third paragraph, Section 2-2 first paragraph and conditions adopted pursuant to Section 2-2 second paragraph of the Act, the Act Sections 2-4, 2-5 or Sections 1-3, 1-7, 2-1, 2-2, 2-4, 7-1 second paragraph, 7-6 nos. 2 and 4, 7-7, 7-8, 7-9 second and third paragraph, 7-10 and 7-11 of this Regulation, the Norwegian Media Authority may impose a financial penalty according to the following rules:

## II

### Entry into force

The amendments shall enter into force on 1 July 2014.

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