


EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

OF 4 MAY 1994

ON THE ECONOMIC PROMOTION ACT OF BURGENLAND (AUSTRIA)

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area¹, in particular to Articles 61 to 63,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice², in particular Article 1 of Protocol 3 thereof,

WHEREAS:

I. FACTS

1. The notification

By letter dated 2 March 1994, received by the EFTA Surveillance Authority on 4 March 1994 (Ref. 94-3896 A), the Austrian Government notified, in accordance with Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement, a plan to replace the current economic promotion act of the Austrian Land Burgenland (*Landes-Wirtschaftsförderungsgesetz 1980, LGBl. 1981/1, as amended by LGBl. 1987/44, 1991/32 and 1991/59*) by a new economic promotion act (*Gesetz vom ... über Massnahmen zur Gewährleistung der wirtschaftlichen Entwicklung im Burgenland (Landes-Wirtschaftsförderungsgesetz 1994 - WiföG) mit dem gleichzeitig das Tourismusgesetz geändert wird*). The currently applied economic promotion act was notified by the Austrian Government as existing aid³.

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

³ See letter dated 3 March 1994, received on 4 March 1994; Ref. 94-3878 A; code number B 1 of the submitted register of existing aid.

The notification was amended by letter dated 14 March 1994, received by the EFTA Surveillance Authority on 15 March 1994 (ref. 94-4945 A). The EFTA Surveillance Authority, by letter dated 21 March 1994 (ref. 94-5002 D), requested additional information from the Austrian Government which was provided orally in a meeting between the State aid and Monopolies Directorate and representatives of the Austrian Government on 22 March 1994 and confirmed in a letter dated 5 April 1994 (ref. 94-5705 A).

2. The contents of the proposed law

The proposed economic promotion act aims at helping industry, trade and the tourism sector in Burgenland to adjust to the changed geo-political situation in central Europe and to strengthen its competitiveness (§§ 1 and 2). The foreseen aid measures to industry and trade shall focus on

- innovation and technology
- research and development
- environment and ecology
- internationalisation
- improvement of the economic structure of SMEs
- infrastructure,

whereas aid to tourism shall concentrate on

- foundation and enlargement of businesses and facilities,
- improvements of quality supply,
- consultancy help, vocational training and business management (§ 3).

Aid may be awarded by the Land in the form of

- (a) grants,
- (b) loan guarantees,
- (c) consultancy help,
- (d) equity participation and
- (e) "operation, taking over and mediation of all businesses contributing to the objectives of the law as well as performance of all activities aiming at aiding industry, trade and tourism" in Burgenland (omnibus clause - § 5).

All businesses located or intended to be located in Burgenland may benefit, on application, from the proposed measures (§ 4).

The measures are mainly funded through the budget of Burgenland (with regard to measures referred to under (a) and (b) above - § 8) and privatisation revenues (with regard to measures referred to under (c) to (e) above - § 7) and amount, as spelt out in the notification, to 100 million ATS in 1994.

3. The foreseen implementation of the proposed aid measures

The foreseen aid measures are to be implemented by Wirtschaftsservice Burgenland Aktiengesellschaft - WIBAG, a public company which is to be established according to the notified draft law. According to the information provided by the Austrian authorities, with the exception of consultancy help no individual award of aid may be granted solely on the basis of the present law. With regard to grants, loan guarantees and equity participation, individual awards of aid may be granted only on the basis of guidelines or ministerial decrees. Aid awards on the basis of the law which are not covered by guidelines or ministerial decrees, i.e. measures taken under § 5 (e), are subject to individual notification to the EFTA Surveillance Authority and may be implemented only after the EFTA Surveillance Authority has authorised the award.

In detail, the foreseen measures in favour of industry and trade are implemented as follows:

- Grants and loan guarantees (§ 5 (a) and (b)) will be awarded on the basis of guidelines which were notified to the EFTA Surveillance Authority at the same time as the present law bill (ref. 94-3896 A). The guidelines will be subject to a separate assessment and decision (case 94003 - see letters dated 14 March 1994 - ref. 94-4945 A, and 16 March 1994 - ref. 94-4996 D).
- Consultancy under § 5 (c) has so far been provided, according to the information provided by the Austrian Government (ref. 5705 A), exclusively and free of charge by the *Burgenländische Industrie- und Betriebsansiedlungsgesellschaft (BIBAG)* itself. This practice will be continued by WIBAG. According to the information available, consultancy help comprises consultancy in connection with aid measures as well as providing expertise and market information.
- Equity participation (§ 5 (d)) will be made on the basis of the existing guidelines adopted by the *Burgenländische Risikokapitalbeteiligungsgesellschaft (BRiKaBAG)*, a state-owned venture capital investment company, which will continue to operate, under the proposed new law, as WIBAG. Standardised information on the guidelines was submitted to the EFTA Surveillance Authority together with the information on existing aid in Austria⁴. The text of the guidelines was handed over to the State aid and Monopolies Directorate in the meeting on 22 March 1994.
- Measures under § 5 (e) will be notified individually (see letter dated 5.4.1994 - ref. 94-5705 A)

Measures in favour of the tourism sector will be awarded in accordance with the scheme on tourism promotion (Verordnung der burgenländischen Landesregierung vom 19.10.1993 betreffend die Schwerpunktförderung in der Tourismuswirtschaft). The tourism scheme has the legal form of a ministerial decree. Information on the scheme was submitted to the EFTA Surveillance Authority together with the

⁴ See letter dated 3 March 1994, received on 4 March 1994; ref. 94-3878 A; code number B 3 of the submitted register of existing aid.

information on existing aid in Austria (see letter dated 3 March 1994, received on 4 March 1994; ref. 94-3878 A; code number B 4 of the attached register of existing aid) and will remain in force under the framework of the proposed law.

In the letter submitting the requested additional information (ref. 5705 A) the Austrian Government indicated its willingness to submit an annual report on the application of the law in the standardised form requested by the EFTA Surveillance Authority.

II. APPRECIATION

The foreseen measures constitute aid in the meaning of Article 61 (1) of the EEA Agreement. Both the acceptance or rejection of applications and the determination of the amount and the terms of the aid are assessed and decided on in each individual case by WIBAG which is the competent aid granting authority of Burgenland. The budget for the aid schemes under the economic promotion law bill is mainly funded through the budget and privatisation revenues of Burgenland. Thus, the aid will be granted by the State through State resources. It should be borne in mind that all aid granted by regional or local bodies of States, whatever their status and description, is covered by the provisions of Article 61 (1) of the EEA Agreement⁵. The law foresees aid awards in favour of certain undertakings or the production of certain goods. By relieving them of some of their costs, which they normally would have to bear themselves, such aid gives financial advantages and improves their competitive situation. Since the production of the favoured undertakings may be in competition with that of undertakings in other States participating in the EEA, such aid is liable to distort intra-EEA trade.

Consequently, the EFTA Surveillance Authority is obliged to assess whether any of the exemption clauses under Article 61 (2) and (3) are applicable in order to exempt the aid measure from the general prohibition of aid under Article 61 (1).

The economic promotion act (*Landes-Wirtschaftsförderungsgesetz 1994*) will form the basic legal framework for aid measures in favour of industry, trade and the tourism sector in Burgenland and will replace the current economic promotion act of the Austrian Land Burgenland (*Landes-Wirtschaftsförderungsgesetz 1980*) retroactively as from 1 January 1994. Compared to the latter, which allowed general investment aid without any restrictions to certain objectives or sectors, the proposed new law introduces a list of horizontal objectives (see section I.2 above). Individual projects qualify for aid only if one of the objectives stipulated in the law is fulfilled. In this respect, the law may be regarded as an adaptation of the basic legal framework for state aid in Burgenland to the EEA rules.

As a general remark, it is noted that all businesses located or intended to be located in Burgenland may benefit, on application, from the proposed measures. Thus, the law

⁵ See ECJ, 14 October 1987, Case 248/84, *Germany/Commission* (1987) ECR 4013 with regard to Article 92 of the EC Treaty.

bill is non-discriminatory in terms of nationality and in that respect compatible with the EEA Agreement.

Under the framework established by the law, more precise criteria for individual awards of aid and for the foreseen aid intensities are stipulated in guidelines. Therefore, the assessment of the compatibility of the aid measures has to be carried out on the level of the guidelines and not on the level of the proposed law. This applies, on the one hand, to the award of grants and guarantees (§ 5 (a) and (b)), where the new guidelines will be assessed under case 94003 and, on the other hand, to equity participation (§ 5 (d)) and aid to tourism (§ 3), where the existing guidelines will continue to apply (see section I.3 above). The two latter are subject to constant review under Art 1 (1) of Protocol 3 to the Surveillance and Court Agreement.

For consultancy help no specific guidelines are foreseen. On the basis of the information available it may be concluded that aid under this heading would in most cases fall under the *de minimis* threshold and may therefore be neglected. In cases where consultancy help should exceed this threshold and is awarded in conjunction with other aid measures, it will be taken into account when calculating the overall aid intensity of the project in question. Thus, the maximum aid intensity allowed under either of the guidelines will not be exceeded.

As regards the omnibus clause provided for under § 5 (e), the Austrian Government has committed itself to notify all individual awards of aid based on that provision. Therefore, the assessment of the compatibility of aid measures awarded under that heading and exceeding the *de minimis* threshold will be made on a case by case basis.

Therefore it is concluded that the economic promotion act (*Landes-Wirtschaftsförderungsgesetz 1994*) qualifies for exemption under Article 61 (3) (c).

HAS ADOPTED THIS DECISION:

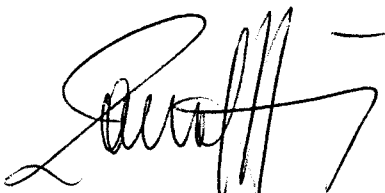
1. The EFTA Surveillance Authority has decided not to raise objections to the economic promotion act of Burgenland (*Landes-Wirtschaftsförderungsgesetz 1994 - WiföG*) as notified in letters dated 2 March 1994 (ref. 94-3896 A), 14 March 1994 (ref. 94-4945 A) and 5 April 1994 (ref. 94-5705 A).
2. The Austrian Government is obliged to submit a simplified annual report (according to chapter 30 of and Annex IV to the Procedural and Substantive Rules in the Field of State Aid) on the application of the law to the EFTA Surveillance Authority.

Done at Brussels, 4 May 1994

For the EFTA Surveillance Authority,



Knut Almestad,
President of the EFTA Surveillance Authority



Heinz Zourek
College Member